

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

3d 54

APPENDIX OF THE PARTIES.

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21,972

484

INTERNATIONAL ASSOCIATION OF MACHINISTS,
DISTRICT LODGE 94, AFL-CIO; and AUTOMOTIVE
MARINE, PRODUCTION FINISHERS, EQUIPMENT,
MAINTENANCE AND PUBLIC SERVICE PAINTERS
LOCAL UNION 1798, BROTHERHOOD OF PAINTERS,
DECORATORS AND PAPERHANGERS OF AMERICA,
AFL-CIO,

Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent,

THOMAS CADILLAC, INC., and LOU EHLERS CAD-
ILLAC,

Intervenors.

Volume I of 3 Volumes.

United States Court of Appeals
for the District of Columbia

FILED SEP 13 1968

Nathan J. ...
CLERK

HERBERT M. ANSELL,
1336 Wilshire Boulevard,
Los Angeles, California 90017,

ABE LEVY,
1520 Wilshire Boulevard,
Los Angeles, California 90017,

PLATO E. PAPPS,
1300 Connecticut Avenue,
Washington, D. C.,
Attorneys for Petitioners.





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APPENDIX OF THE PARTIES.

IN THE
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FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21,972

INTERNATIONAL ASSOCIATION OF MACHINISTS,
DISTRICT LODGE 94, AFL-CIO; and AUTOMOTIVE
MARINE, PRODUCTION FINISHERS, EQUIPMENT,
MAINTENANCE AND PUBLIC SERVICE PAINTERS
LOCAL UNION 1798, BROTHERHOOD OF PAINTERS,
DECORATORS AND PAPERHANGERS OF AMERICA,
AFL-CIO,

Petitioners,

vs.

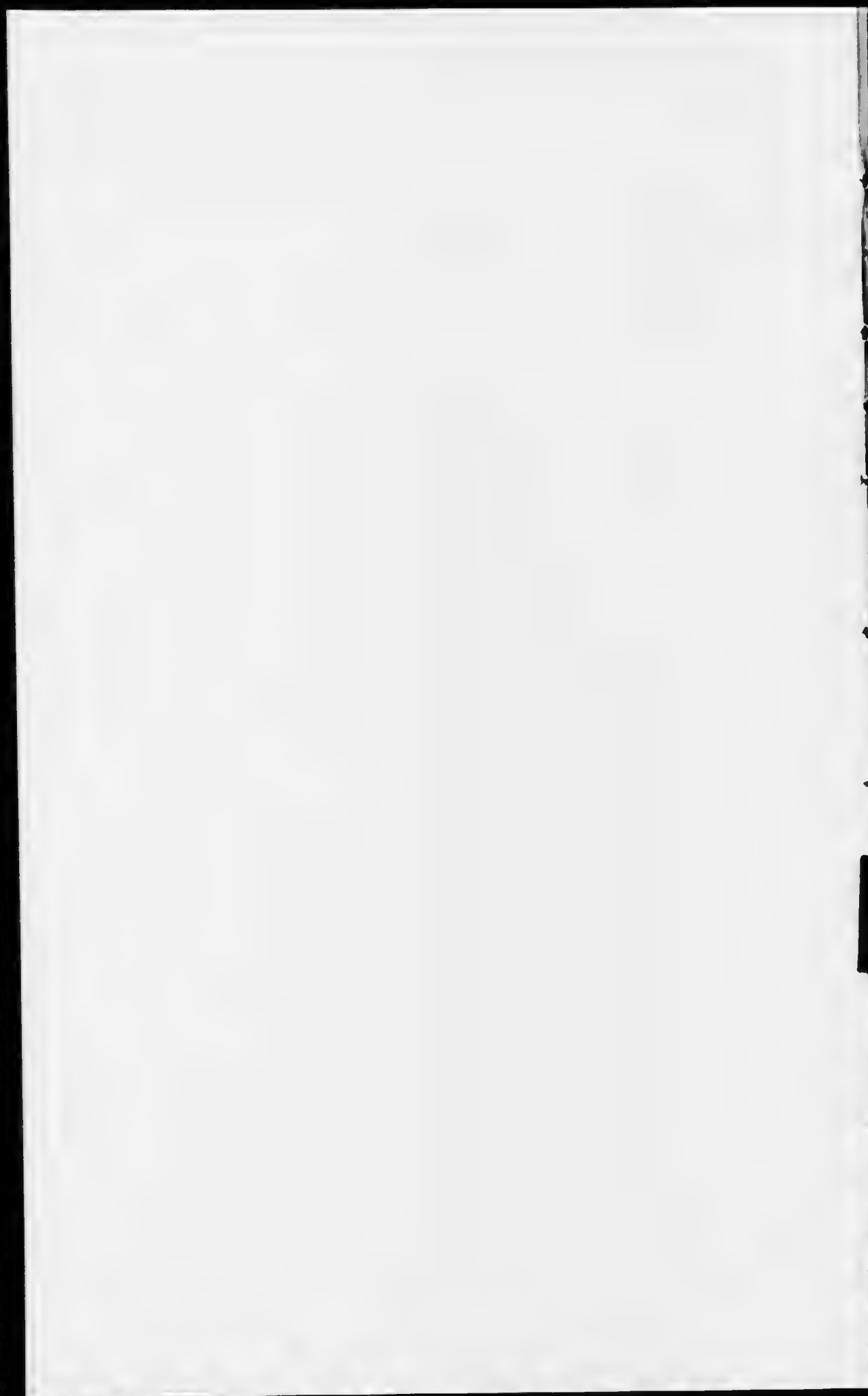
NATIONAL LABOR RELATIONS BOARD,

Respondent,

THOMAS CADILLAC, INC., and LOU EHLERS CAD-
ILLAC,

Intervenors.

Volume I of 3 Volumes.



United States of America
Before the National Labor Relations Board
Region 31

Case No. 31-CA-83-2
(formerly Case No. 21-CA-6744-2)

THOMAS CADILLAC, INC.

and

AUTOMOTIVE, MARINE, PRODUCTION FIN-
ISHERS, EQUIPMENT MAINTENANCE
AND PUBLIC SERVICE PAINTERS, LOCAL
UNION 1798, BROTHERHOOD OF PAINT-
ERS, DECORATORS AND PAPER HANG-
ERS OF AMERICA, AFL-CIO

Case No. 31-CA-83-3
(formerly Case No. 21-CA-6744-3)

LOU EHLERS CADILLAC

and

AUTOMOTIVE, MARINE, PRODUCTION FIN-
ISHERS EQUIPMENT MAINTENANCE
AND PUBLIC SERVICE PAINTERS, LOCAL
UNION 1798, BROTHERHOOD OF PAINT-
ERS, DECORATORS AND PAPER HANG-
ERS OF AMERICA, AFL-CIO

Case No. 31-CA-84-2
(formerly Case No. 21-CA-6747-2)

THOMAS CADILLAC, INC.

and

INTERNATIONAL ASSOCIATION OF MA-
CHINISTS, DISTRICT LODGE 94, AFL-CIO

Case No. 31-CA-85-2
(formerly Case No. 21-CA-6748-2)

LOU EHLERS CADILLAC

and

INTERNATIONAL ASSOCIATION OF MA-
CHINISTS, DISTRICT LODGE 94, AFL-CIO
STIPULATION CORRECTING TRANSCRIPT
OF THE RECORD

IT IS HEREBY STIPULATED between counsel
for the respective parties that the transcript of the rec-
ord of the hearing in the above matter be corrected in
the following particulars:

Page 17, line 11—"consisted" for "is contested"

Page 18, line 10—"when" for "where"

Page 19, line 22—"though" for "so"

Page 21, lines 24-25—change to read: "We do not
claim it is. So far as they would rely on the contract,
they can't, because that is a multiplant unit."

Page 22, lines 15-16—change to read: "We also take
the same position." Delete rest of first sentence.

Page 25, line 16—"union" for "unit"

Page 34, line 18—change this line to read: "I would
rephrase the stipulation, on the dates shown," strike out
the word "motion"

Page 37, line 23—"1964" for "1965"

Page 46, line 11—"unit" for "union"

Page 113, line 18—cross out "there is where"

Page 113, line 19—insert "stated" after "Director"

Page 118, line 9—cross out "not"

Page 137, lines 8, 9, and 10—cross out all three lines

Page 147, line 8—"Did" for "Do" and "of" for "to";
line 9—cross out "ones were"; line 10—cross out "or"

Page 150 line 12—"Are" for "Or", line 15—"Are"
for "Or"

Page 152, line 9—cross out "both"

Page 157, line 18—insert the word "Cadillac" after
the word "Ehlers"

Page 160, line 1—"procured" for "prepared"

Page 167, line 22—"from" for "to", line 24—"to"
for "since" and "1975" for 1957"

Page 169, line 5—"receive" for "adopt" and "of" for
"with"

Page 172, line 15—"simultaneously" for "subse-
quently"

Page 173, line 13—"was" for "is", line 25—"the" for
"their"

Page 175, line 14—cross out first "in", line 15—"im-
material" for "material"

Page 179, line 1—"utilities" for "unit"

Page 198, line 22—"of" for "or"

Page 204, line 17—cross out "Do", capitalize "y" in
"Your", cross off "s" on "depositions" and add "s" to
"cover", line 18—change question mark to period, cross
out "That is" and begin "when" with capital "W", line
21, change period to a comma

Page 208, line 19—"our" for "or"

Page 214, line 6—cross out "not", line 10—"included
in" for "excluded from"

Page 236, line 8—cross out "a", line 9—"bargaining"
for "bar"

Page 238—line 6—cross out everything after first
sentence "No, it does not.", line 7—cross out entire line,

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line 8—cross out entire line, line 9—cross out, line 10—cross out, line 18—add “and” after “tion,” at beginning of line, “assigns” for “assignor’s”, change period to a comma, add “and” after the comma, cross out “This”, line 20—“assign” for “assignor”

Page 241—line 25—“their” for “our”

Page 243—line 5—“assign’s” for “assignor’s”

Page 250—line 17—insert “not that” after the word “was”

Page 301, line 24—“Eby” for “Hebee”, line 25—same as line 24.

Page 303—line 7—“Eby” for “Hebee”

Page 304—line 3—“compensation” for “dependents”, line 4—“compensation” for “dependents”

Page 304—lines 12, 16, and 18—“Eby” for “Hebee”, also same on line 25

Page 307—line 7—“Eby” for “Hebee”

Page 314, line 3—“Ullen” for “Allerton”

Page 317, line 10—cross out “not”

Page 435, line 21—“ever” for “had to”

Page 438, line 16—“Ehlers” for “Cadillac”

Page 440, line 5—“No” for “Yes”

Page 451, line 15—Delete “a”, insert “from” after “separate”

Page 465, line 9—“it” for “this”, line 10—change the period to a comma and begin “It” with a small “i”

Page 472, line 17—“politely” for “might” and “refused” for “refuse”

Page 473, line 5—“these” for “there is”, line 6—delete “of”

Page 475, line 8—insert after “secrets”: “etc.”

Page 477, line 24—"branch" for "general"

Page 478, line 14—"had" for "at" at end of line, line
16—"or" for "are"

DATED: March 30, 1966.

LATHAM & WATKINS

/s/ By R. W. LUND

R. W. Lund

Attorneys for Respondent

Lou Ehlers Cadillac

H. Burdette Fredricks

Attorney for Respondent

Thomas Cadillac, Inc.

RICHMAND, GARRETT & ANSELL

By Herbert M. Ansell

Attorneys for the Charging Parties

George A. Pappy

Counsel for the General Counsel

National Labor Relations Board

United States of America

8 *International Assn. of Machinists, etc. vs.*

Before the National Labor Relations Board

Case No. 31-CA-83-2

THOMAS CADILLAC, INC.

and

AUTOMOTIVE, MARINE, PRODUCTION FIN-
ISHERS, EQUIPMENT MAINTENANCE
AND PUBLIC SERVICE PAINTERS, LOCAL
UNION 1798, BROTHERHOOD OF PAINT-
ERS, DECORATORS AND PAPER HANG-
ERS OF AMERICA, AFL-CIO

Case No. 31-CA-83-3

LOU EHLERS CADILLAC

and

AUTOMOTIVE, MARINE, PRODUCTION FIN-
ISHERS, EQUIPMENT MAINTENANCE
AND PUBLIC SERVICE PAINTERS, LOCAL
UNION 1798, BROTHERHOOD OF PAINT-
ERS, DECORATORS AND PAPER HANG-
ERS OF AMERICA, AFL-CIO

Case No. 31-CA-84-2

THOMAS CADILLAC, INC.

and

INTERNATIONAL ASSOCIATION OF MA-
CHINISTS, DISTRICT LODGE 94, AFL-

Case No. 31-CA-85-2

LOU EHLERS CADILLAC

and

INTERNATIONAL ASSOCIATION OF MA-
CHINISTS, DISTRICT LODGE 94, AFL-
CIO

ORDER TRANSFERRING CASES TO THE
NATIONAL LABOR RELATIONS BOARD

A hearing in the above-entitled cases having been held before a duly designated Trial Examiner and the Decision of the said Trial Examiner, a copy of which is annexed hereto, having been filed with the Board in Washington, D. C.,

IT IS HEREBY ORDERED, pursuant to Section 102.45 of National Labor Relations Board Rules and Regulations that the above-entitled matter be, and it hereby is, transferred to and continued before the Board.

Dated, Washington, D. C., May 17, 1966

By direction of the Board:

Ogden W. Fields
Executive Secretary

NOTE: Communications concerning compliance with the Trial Examiner's Decision should be with the Director of the Regional Office issuing the complaint.

Attention is specifically directed to the excerpts from the Rules and Regulations appearing on the pages attached hereto.

Exceptions to the Trial Examiner's Decision in these cases must be received by the Board in Washington, D. C., on or before June 9, 1966.

[Title of Board and Cause.]

George A. Pappy, Esq., of Los Angeles, Calif., for the General Counsel. Richard W. Lund, Esq., of Los Angeles, Calif., for the Respondent. Lou Ehlers Cadillac. H. Burdette Fredericks, Esq., of Los Angeles, Calif., for the Respondent. Thomas Cadillac, Inc. Herbert M. Ansell, Esq., of Los Angeles, Calif., for the

Automotive, Marine, Production Finishers, Equipment Maintenance and Public Service Painters, Local Union, 1798, Brotherhood of Painters, Decorators and Paperhangers of America, AFL-CIO, and International Association of Machinists District Lodge 94, AFL-CIO.

TRIAL EXAMINER'S DECISION

Upon charges filed by the Automotive, Marine, Production Finishers, Equipment Maintenance and Public Service Painters, Local Union 1798, Brotherhood of Painters, Decorators and Paperhangers of America. AFL-CIO, herein referred to as the Painters, and the International Association of Machinists, District Lodge 94, AFL-CIO, herein referred to as the Machinists, the Regional Director for the National Labor Relations Board's Thirty-first Region caused to be issued an order consolidating cases, consolidating complaint and notice of hearing dated November 30, 1965, in which Thomas Cadillac, Inc., herein referred to as the Respondent Thomas, and Lou Ehlers Cadillac, herein referred to as the Respondent Ehlers, were named Respondents. The complaint charged that the Respondents were each violating Sections 8(a)(1) and (5) of the National Labor Relations Act, herein referred to as the Act.

The Respondents in separate answers generally denied that they had engaged in any of the unfair labor practices alleged in the consolidated complaint.

Pursuant to due notice this case came on to be heard before the undersigned Trial Examiner, Lowell Goerlich on February 23, 24, 25 and 28, 1966, at Los Angeles, California. All parties participated fully in the hearing

and each party was offered an opportunity to be heard, to call, examine, and cross-examine witnesses, to argue orally upon the record, to submit proposed findings of fact and conclusions of law and to file briefs. All briefs have been reviewed and considered by the Trial Examiner.

The principle issues raised by the parties were:

1. Whether the Respondents Thomas and Ehlers, as successors, refused to bargain collectively with the Machinists and the Painters in violation of Section 8(a)(5) of the Act.
2. Whether the Respondents Thomas and Ehlers violated Section 8(a)(5) of the Act in that each Respondent refused to honor the collective bargaining agreement executed between their predecessor and the Machinists and the Painters.

Upon the whole record and from his observation of the witnesses, the Trial Examiner makes the following:

Findings of Fact

I. The business of the Respondents

Cadillac Motor Car Division, General Motors Corporation, (a Delaware Corporation) Los Angeles branch, herein called General Motors, prior to May 29, 1965, operated two retail Cadillac sales and service agencies, to wit, one located at 5151 Wilshire Boulevard, and one located at 1076 West Seventh Street, both in Los Angeles, California. At each of these locations, in the course and conduct of its business operations, General Motors annually did a gross volume of business in excess of \$500,000. At each of these locations, General Motors annually received goods valued in excess of

\$50,000 directly from suppliers located outside the State of California.

Respondent Ehlers is a California corporation incorporated on May 19, 1965. After June 1, 1965, its offices and principal place of business has been located at 5151 Wilshire Boulevard, Los Angeles, California and since June 1, 1965, Respondent Ehlers has operated as an authorized dealer for the retail sales and services of Cadillac motor vehicles at such location. Respondent Ehlers is, and has been since June 1, 1965, the successor to General Motors at General Motors' location at 5151 Wilshire Boulevard, Los Angeles, California.

Respondent Ehlers, in the course and conduct of its business operations, in the 12-month period ending June 1, 1966, will do a gross volume of business in excess of \$500,000 and will, during the same period, purchase and receive goods valued in excess of \$50,000 directly from suppliers located outside the State of California. Respondent Ehlers is, and at all times material herein has been, an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Respondent Thomas is a California corporation. After June 1, 1965, its offices and principal place of business has been located at 1076 West Seventh Street, Los Angeles, California, and since June 1, 1965, Respondent Ehlers has operated as an authorized dealer for the retail sales and service of Cadillac motor vehicles at such location. Respondent Thomas is, and has been since June 1, 1965, the successor to General Motors at General Motors' location at 1076 West Seventh Street, Los Angeles, California.

Respondent Thomas, in the course and conduct of its business operations, in the 12-month period ending June 1, 1966, will do a gross volume of business in excess of \$500,000, and will, during the same period, purchase and receive goods valued in excess of \$50,000 directly from suppliers located outside the State of California. Respondent Thomas is, and at all times material herein has been, an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

II. The labor organizations

The Machinists and the Painters are labor organizations within the meaning of Section 2(5) of the Act.

III. The unfair labor practices

A. Statement of pertinent facts

Until May 28, 1965, General Motors operated branch retail stores for the sale of Cadillac motor vehicles, parts and accessories and the service of such vehicles at 1076 West Seventh Street and 5151 Wilshire Boulevard, Los Angeles, California.¹ The West Seventh street branch commenced business in 1949. The Wilshire Boulevard branch opened in 1954. In the operation of these branches General Motors' relation to the general public was substantially the same as that of any dealer authorized by General Motors² to engage in the sale and service of new Cadillac motor vehicles.

¹General Motors also operated a used car lot at 501 Vermont Street, Los Angeles, which was discontinued on May 28, 1965.

²General Motors through its Cadillac Division manufactures and assembles Cadillac motor vehicles, at Detroit, Michigan, which are offered to the general public through franchised dealers. The Respondents are among its franchised dealers.

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On August 1, 1957, International Association of Machinists, for and in behalf of District Lodge #94, Local #1086, AFL-CIO, after a representation election was certified for the following unit of General Motors' employees at its West Seventh Street and Wilshire Boulevard branches:

All employees, excluding all new and used car salesmen, service salesmen, office clerical employees, shop clerks, pick-up drivers—parts, and pick-up and delivery man, and guards, supervisors and professional employees as defined in the Act.

A collective-bargaining agreement was executed between General Motors and the Machinists on October 17, 1957. The agreement by its terms continued "in full force and effect without change until October 17, 1958." Painters were included under the Agreement.

On November 6, 1958, after a representation election the Automotive, Marine, Production Finishers, Equipment Maintenance and Public Service Painters, Local Union 1798, Brotherhood of Painters, Decorators and Paperhangers of America, AFL-CIO, was certified for the following unit of General Motors' employees at its West Seventh Street and Wilshire Boulevard branches:

All employees employed in the classification "painter" excluding all foremen and other supervisors within the meaning of the amended Act; all guards and professional employees within the meaning of the amended Act; all office clerical employees and all other employees and all other employees not specifically included in the unit.

The current collective-bargaining agreement was executed by and between General Motors and both certified Unions on December 1, 1964. By its terms the agreement continues "in full force and effect without change until December 1st, 1967."³ (Emphasis added) In the agreement General Motors recognized the Machinists for a unit of employees embracing the West Seventh Street and Wilshire Boulevard branches as follows:

All mechanics, polishers, washers, lubricators, garage attendants, body and fender men, machinists, elevator operators, trimmers, and maintenance but excluding branch manager, assistant branch manager, sales manager, used car manager, service manager, assistant service manager, parts manager, assistant parts manager, general foreman, foreman, assistant foremen, inspectors, timekeepers, shop clerks, service salesmen, office clerical employees, new and used car salesman, tower operator, pickup drivers-parts, pick-up and delivery men,⁴ guards, operating engineers, supervisors, clerical employees, G.M. Tech students, and work dispatchers.

In the same agreement General Motors recognized the Painters for a unit of employees embracing the West Seventh Street and Wilshire Boulevard branches as follows:

All painters excluding branch manager, assistant branch manager, sales manager, used car manager,

³The agreement also provided that if either party failed to give notice to terminate or modify the agreement, "the Agreement shall continue in effect from year to year after December 1st, 1967, subject to termination by either party on 60 days' written notice prior to December 1st of any subsequent year."

⁴Although excluded from the unit description pick up and delivery men were included, in fact, in the coverage of the agreement.

service manager, assistant service manager, parts manager, assistant parts manager, general foreman, foreman, assistant foreman, inspectors, timekeepers, shop clerks, parts clerks, service salesmen, office clerical employees, new and used car salesmen, tower operator, pick-up drivers-parts, pick-up and delivery men, guards, operating engineers, supervisors, clerical employees, G.M. Tech students and work dispatchers.⁵

Among other things the Agreement provided for voluntary dues deduction and that an employee who was a member of the Union upon the effective date of the Agreement "shall continue membership in the Union for the duration of [the] Agreement." Employees who were not members of the Union at the time the Agreement became effective were required to become members of the Union "within ten (10) days after the thirtieth (30th) day following the effective date of [the] Agreement or within ten (10) days after the thirtieth (30th) day following employment whichever [was] later." Compliance with these conditions required "paying an initiation fee and the membership dues uniformly required as a condition of acquiring or retaining membership in the Union."

The Agreement provided for the referral of certain grievances⁶ to an "impartial umpire" from whose deci-

⁵The units are sometimes referred to herein as the "contract units."

⁶The Agreement provides "It shall be the function of the Umpire, after due investigation and within thirty (30) days after submission of the case to him, to make the decision in all claims of discrimination for union activity or membership, and in all cases of alleged violation of the terms of this Agreement or supplements thereto in regard to recognition, representation, griev-

sion "[t]here shall be no appeal" and whose decision "will be final and binding on the Union and its members, and the employee or employees involved and the Company." The Agreement also contained a no-strike clause.

On January 12, 1965, General Motors advised the Unions by letter that it was in the process of reconsidering its policy of operating its own Cadillac agencies and that it was contemplating the transfer of its West Seventh Street and Wilshire Boulevard branches to independent dealers. On May 10, General Motors advised the Unions by letter that the Respondent Thomas and the Respondent Ehlers would take over the West Seventh Street branch and the Wilshire Boulevard branch respectively on June 1, 1965. Thereafter the Unions, by their attorneys, addressed letters to the two Respondents. By letter dated May 17, 1965 the Unions requested the Respondent Thomas to meet with their representatives on May 24, 1965, at 10 a.m.⁷ By letter dated June 3, 1965, the Unions requested Respondent Thomas to "submit to arbitration the question of whether it was bound under the terms of any labor

ance procedure, seniority, disciplinary layoff and discharge, working hours, leaves of absence, union bulletin boards, strikes and stoppages, vacation pay, holiday pay, Article X, Sections 2, 3, 4 and 5, and any alleged violations of written local or national agreements. . . . Any case appealed to the Umpire on which he has no power to rule shall be referred back to the parties without decision."

⁷The letter in part stated, "The employees at the Wilshire branch (by letter dated May 18, 1965, such reference was corrected to refer to the West Seventh Street branch) and the above unions are concerned that this change of ownership will not adversely effect them. . . . In order to clarify the rights of the employees and above unions, and to deal with any questions that may arise on the part of all parties concerned, we are requesting a meeting at your very earliest convenience. . . ."

agreement with the Machinists and Painters Unions." Respondent Thomas failed to respond to the requests.

By a letter dated May 19, 1965, the Unions requested Respondent Ehlers to meet with their representatives "on Friday afternoon, May 21, 1965, on Monday, May 24, at 3 p.m., or thereafter."⁸ By letter dated June 3, 1965, the Machinists requested Respondent Ehlers to "arbitrate the question as to whether the existing contract is binding upon him" and by letter dated June 8, 1965, the Painters requested that the "application of the Agreement" to Ehlers be submitted to arbitration in accordance with the Agreement. Ehlers declined the Unions' request for arbitration; nor did it recognize and bargain with the Unions.

Shortly prior to May 28, 1965, General Motors employed 117 employees in the contract units, sometimes referred to as the service departments. Of these employees 75 were employed at the West Seventh Street branch and 42 at the Wilshire Boulevard branch.⁹ Each branch was supervised by a branch manager who reported to the Los Angeles branch manager. The Los Angeles branch manager was the highest local authority over the two branches and reported directly to the Cadillac Division in Detroit, Michigan. The Los Angeles branch manager was located at the West Seventh Street

⁸The letter in part stated, "In order to clarify the rights of the employees and above unions, and to deal with any questions that may arise on the part of all parties concerned, we are requesting a meeting at your earliest convenience."

⁹At the Wilshire Boulevard branch all employees represented by the Machinists were members of the Machinists except one employee. All employees represented by the Painters were members of the Painters. At the West Seventh Street branch all employees represented by the Machinists were members of the Machinists except two employees. All employees represented by the Painters were members of the Painters except one employee.

store as were the controller, the purchasing agent, the personnel manager, the supervisor of accounting, the used car manager and credit manager. Some of these employees were carried on General Motors' Detroit payroll. While there were apparent interrelationships between the operations of the West Seventh Street and the Wilshire Boulevard branch, J. R. Toombs, supervisor of accounting for General Motors, testified that he recalled but one instance in his 15½ years of employment where there had been an interchange of an employee between the two branches. Each of the service departments were assigned separate services managers and new employees were hired by the service supervisors of the respective branch for their departments. Separate balance sheets were kept for each branch. Inter-branch accounts were maintained for transactions between branches. Each branch possessed independent performance capability and was self-contained and self-supporting from the standpoint of equipment, tools and other materials. Each branch had its own complement of employees and supervisors. Separate payrolls were kept at each branch and each branch maintained its own timeclocks and timecards. The premises occupied by each branch was separately leased.

Commencing in March 1965,¹⁰ LaRue Thomas began negotiating with General Motors relative to procuring a franchise for the West Seventh Street branch and relative to purchasing certain designated assets of General Motors at its West Seventh Street branch. During the negotiations LaRue Thomas was apprised by

¹⁰The initial contracts were between LaRue Thomas and General Motors. Later LaRue Thomas assigned his interests to Respondent Thomas.

General Motors that a labor agreement was in existence between General Motors and the Unions, but was advised by General Motors that there were no successor rights in the Agreement and that Thomas would not be bound by it.

On May 11, 1965, General Motors and LaRue Thomas executed a buy and sell agreement wherein among other things it was agreed that:

(1) General Motors would discontinue all of its Cadillac retail sale and service operations conducted at the West Seventh Street branch and execute with Thomas a "Cadillac Direct Dealer Selling Agreement" with a term of 5 years.

(2) General Motors would lease or sublease the premises occupied by the West Seventh Street branch.

(3) Unamortized leasehold improvements would be assumed by Thomas.

(4) Thomas would purchase:

(a) General Motors' fixed assets including machinery and shop equipment, parts and accessory equipment, furniture and fixtures and service cars.

(b) Company cars used for demonstration purposes and used cars used or acquired by General Motors in connection with its branch operations.

(c) All new and unused Cadillac motor vehicles.

(d) All unused and undamaged Cadillac parts.

(e) All unused and undamaged Cadillac accessories.

(f) All other unused and undamaged Cadillac parts and accessories.

(g) Special tools.

(h) Gas, oil and grease, new tires and tubes.

(i) Paint materials.

(j) Undercoating.

(k) Miscellaneous supplies and materials.

(5) Thomas would purchase all trade accounts receivable.

(6) General Motors would assign to Thomas "all the right, title and interest of [General Motors] in and to Sublet Repairs and Work-in-Process" at General Motors' branch operation.

(7) General Motors would assign all unfilled retail orders for Cadillac motor vehicles.

(8) Thomas agreed "to assume and discharge all liabilities with respect to warranties on new cars and to assume responsibilities for making policy adjustments on new cars delivered by [General Motors'] Branch Operations. . . .

The Direct Dealer Selling Agreement or Franchise Agreement referred to granted Respondent Thomas the "non-exclusive privilege of selling new Cadillac motor vehicles, parts and accessories. . . ." Among other things the Agreement required Thomas to furnish General Motors every month with an estimate of its requirements for new Cadillac motor vehicles for the next 3 months and "every ten (10) days with a sales report." Under the Agreement Thomas was required to set and maintain an "owned net working capital" satisfactory to General Motors. Thomas also was required to "provide satisfactory sales performance and render satisfactory service to owners" and "receive, investigate and handle all complaints received from owners of Cadillac motor vehicles with a view of securing and maintaining good will of the public toward Dealer, Cad-

illac and Cadillac motor vehicles" Unremedied complaints were to be reported promptly to General Motors. Thomas was restricted from making any "misleading statements or misrepresentation as to items making up the total selling price of a new Cadillac motor vehicle." Under the Agreement General Motors was entitled to an examination of Thomas' accounts and records "to assure the maintenance of an accounting system of a type designated" by General Motors. Respondent Thomas was required to maintain a standard product sign and a standard authorized service sign. The Agreement reserved to General Motors the right to terminate the Agreement if Respondent Thomas did not conduct its business in conformity with the requirements of the Agreement. Upon the termination of the Agreement Respondent Thomas was obligated to sell to General Motors all new and unused motor vehicles, all unused and undamaged Cadillac parts, all unused and undamaged Cadillac accessories and service supplies and certain signs. The Direct Dealers Selling Agreement could not be assigned by Thomas without the consent of General Motors.

General Motors also agreed to discharge its "obligations and liabilities to employees employed by [General Motors] at [its] Branch Operation for vacations, vacation pay, and pay in lieu of vacation accruing through the periods of employment expiring on the closing date."¹¹ On June 1, 1965, General Motors assigned to the Respondent Thomas, by separate instrument, Accounts Receivable, Unfilled Retail New Car Orders with Customers Cash Deposits thereon, Sublet Re-

¹¹On June 7, 1965, LaRue Thomas assigned his interests to the Respondent Thomas.

pairs and Work-in-Process and prepaid taxes. A Bill of sale was also executed on June 1, 1965 for the items mentioned in the Agreement of May 11, 1965, and the other provisions of May 11 agreement were complied with.

Respondent Thomas commenced operation of the Sales Department on June 1, 1965, and of the Service Department June 7, 1965, at the West Seventh Street branch and established its own salaries, wages, hours and working conditions unrelated to those of General Motors. All the service employees employed by General Motors in the contract units at the West Seventh Street branch were interviewed for employment by the Respondent Thomas and each submitted application for employment. Out of 63 employees hired for the service department 16 were former General Motors' employees; I had been in the Painters' unit, the others had been in the Machinists' unit. Two General Motors employees were disqualified for employment because they had reached the age of 64 years. According to LaRue Thomas employees were hired on the basis of their ability. Out of a service supervisory staff of 7, on June 7, 1965, 3 had been service supervisors for General Motors. A used car salesman for General Motors became an assistant used car manager for Respondent and General Motors' supervisor of Accounting became Respondent Thomas' business manager.

Since June 1, 1965, Respondent Thomas has operated the West Seventh Street branch and has been engaged in substantially the same business operations formerly engaged in at such branch by General Motors.

The Unions commenced picketing Respondent Thomas on June 7, 1965.

Lou Ehlers testified that in his first discussions in Detroit in March 1965 about the possibility of obtaining a Cadillac dealership in Los Angeles, he was advised that General Motors had a union agreement in its Los Angeles establishment. He was not told that the contract would become binding upon him if he took over operation of the branch. Ehlers learned prior to May 12, 1965, that the Union's agreement did not contain a successor and assigns clause. He was advised by counsel, that the labor agreement between General Motors and the Union would not be binding upon him.

On May 12, 1965, Louis W. Ehlers entered into a buy and sell agreement with General Motors relating to the Wilshire Boulevard branch. The Agreement and the details of its implementation were substantially the same as the transactions between General Motors and LaRue Thomas described above. Ehlers consummated the deal as of June 1, 1965, and an assignment to Respondent Ehlers was executed on June 7, 1965.

Respondent Ehlers commenced its operations on June 1, 1965, at the Wilshire Boulevard branch. It established its own salaries, wages, hours and working conditions unrelated to those of General Motors.

All the in-unit employees made application for jobs. These employees were reviewed for hire by General Motors Wilshire service manager Balsemann and General Motors Wilshire foreman Graham, with the object of selecting the most competent and satisfactory persons. Of the 35 service employees employed by Ehlers in June, Graham hired 11 former General Motors employees. Respondent Ehlers hired a total of 87 employees, including management and supervision, of whom 54 had formerly been employed by General Motors at the Wil-

shire Boulevard branch. Ehlers' managers were Lou Ehlers as manager, two men who had worked with him at another location as general sales manager and as business manager, and a new car sales manager, a former General Motors Wilshire employee. In respect to the service department, the service manager and foreman were different individuals than those who were employed in such capacity by General Motors; however, one of them had previously worked at the Wilshire Boulevard branch. Some General Motors' work in process was completed by Respondent Ehlers.

Since June 1, 1965, Respondent Ehlers has operated the Wilshire Boulevard branch and has been engaged in substantially the same business operations formerly engaged in at such branch General Motors.

The Unions commenced picketing Respondent Ehlers on June 9, 1965.

B. Concluding Findings

First: The General Counsel contends that each Respondent is "the successor, pro tanto," of General Motors and obligated to recognize and bargain with the Unions. The crucial question in this regard is "whether the employing industry remains essentially the same after the transfer¹² of ownership." N.L.R.B. v. Auto Ventshade, Inc., 276 F. 2d 303 (C.A. 5). ✓

In *N.L.R.B. v. Colten*, 105 F. 2d 179, 183, Judge Simons wrote:

It is the employing industry that is sought to be regulated and brought within the corrective and

¹²Whether a transfer of ownership is or is not "a bona fide business transaction carried out at 'arm's length'" is immaterial in the consideration of this question. *N.L.R.B. v. Tempest Shirt Manufacturing Co.*, 285 F. 2d 1 (C. A. 5).

remedial provisions of the Act in the interest of industrial peace. . . . It needs no demonstration that the strife which is sought to be averted is no less an object of legislative solicitude when contract, death, or operation of law brings about change of ownership in the employing agency."¹³ (Emphasis supplied)

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The "employing industry" as it existed before the acquisitions of the Respondent employers consisted of the operation of enterprises for the sale of Cadillac motor vehicles, parts and accessories and the service of such vehicles at 1076 West Seventh Street and 5151 Wilshire Boulevard, Los Angeles, California. After the successions these enterprises were continued at the same locations without substantial change, with the performance of substantially the same work by former General Motors employees.¹⁴ Any deviations from the precise practices or procedures of General Motors effected by the Respondent Employers when they assumed operations were not of such a nature as to destroy the continuity and identity of the employing enterprise or alter the basic similarity of the Respondent employers' operations from those of General Motors. Moreover, by the Direct Dealers Selling Agreement General Motors assured a continuation of the operations of the two branches along lines compatible with General Motors'

¹³The quoted language above from the Colten case has been often repeated by the Board. *Weinberger Banana Company, Inc.*, 18 NLRB 787, 792; *The Baldwin Locomotive Works*, 20 NLRB 1100, 1110, *Hooser Veneer Company*, 21 NLRB 1697, 1700, and *McCarron, Co.* 100 NLRB 1537, 1543.

¹⁴Although the Respondent employers put to work former employees of General Motors, under *Chemrock Corp.*, 151 NLRB No. 111 it would appear that such fact need not be proved to establish a successorship.

directions and prior policies. The employing enterprise remained as before the acquisitions, i.e., the sale of Cadillac motor vehicles, parts and accessories and the service of such vehicles. The employing structure remained the same. Cf. Witham Buick, Inc., 139 NLRB 1209; Arbor Chevrolet Company, 93 NLRB 1376.

In Randolph Rubber Co.,¹⁵ 152 NLRB No. 46, the Board has recently said:

It is settled that, where there is a substantial continuity in the identity of the employing enterprise, the purchasing employer is bound to recognize and bargain with the incumbent union. In this case, Respondent took over the plant, machinery and the entire workforce¹⁶ of the Rubber Corporation, and continued the same type of business activity—the manufacture of canvas shoes. While Respondent introduced improved machines and techniques, made changes in the managerial staff, used its own trademarks, and acquired new customers, these factors did not appreciably alter the basic

¹⁵In Randolph Rubber Co., supra, the union was certified in November 1953. The successor employer took over operations of the Company on November 8, 1963. A labor agreement was in effect which did not expire until 1966. Dues were deducted by the predecessor for the first week in November 1963. There was no claim that the successor employer was the alter ego of the predecessor employer.

¹⁶In Chemrock Corp., supra the Board said:

"We think where, as here, the only substantial change wrought by the sale of a business enterprise is the transfer of ownership, the individuals employed by the seller of the enterprise must be regarded as 'employees' of the purchaser as that term is used in the Act. Such individuals possess a substantial interest in the continuation of their existing employee status, and by virtue of this interest bear a much closer economic relationship to the employing enterprise than, for example, the mere applicant for employment in the Phelps Dodge case." [Phelps Dodge Corp. v. N.L.R.B., 313 U.S. 177.]

similarity of Respondent's operation to that of the Rubber Corporation. Upon the entire record, we find a continuity in the employing enterprise which obligated the Respondent as successor to Rubber Corporation to bargain with the Union as the incumbent representative of the employees when it assumed control of the plant in November 8, 1963.

As in the Randolph Rubber case, the continuity in the employing enterprise in the present case obligated the Respondent employers as successors to General Motors to recognize and bargain with the Unions as incumbent representatives of the employees in the unit herein found to be appropriate (see *infra.*) when they respectively assumed operation of the General Motors' sales establishments. See also *Chemrock Corp.*, *supra*; *Maintenance Inc.*, 148 NLRB 1299; *Johnson Ready Mix Company, Inc.*, 142 NLRB 437; *Downtown Bakery Co.*, 139 NLRB 1352; *Witham Buick, Inc.*, *supra*; *Ugite Gas Incorporated*, 126 NLRB 494; *South-erland's Tennessee Company, Inc.*, 102 NLRB 1178; and *The Northwest Glove Co., Inc.*, 74 NLRB 1697.

Nor is the Trial Examiner persuaded that the Respondent employers are absolved from the obligations which attach to a successorship where there is a substantial continuity in the identity of the employing enterprise because the Respondent employees' predecessor was General Motors, a gigantic corporate enterprise, rather than a smaller employer such as the Respondents, or because separate successors purchased semi-autonomous enterprises, for, under the circumstances present here "the interest of industrial peace" is as pronounced as in those kinds of successorships which have warrant-

ed the Board's concern and the imposition of the obligation to bargain. The fact that picket lines resulted from the Respondent employers' failure to deal with the Unions is evidence that such conduct was and is a source of industrial strife and was incompatible with the ends sought to be accomplished by the "application of the settled rule that the industrial strife that the Act seeks to avoid or mitigate, and the validly instituted bargaining relationship it seeks to foster, are "no less an object of legislative solicitude where contract, death or operation of law brings about a change of ownership in the employing agency." See Miller Lumber Co. 90 NLRB 1361, 1362. Moreover, to hold the Respondent employers as successors and bound to recognize and bargain with the Union, under the facts herein, not only will foster a validly instituted bargaining relationship but will substitute collective bargaining for economic warfare¹⁷ and tend toward the encouragement of the practice and procedure of collective bargaining. Cf. Phelps-Dodge Corp. v. N.L.R.B., 313 U.S. 177, 182.

Second The General Counsel maintains that Respondent's Thomas and Ehlers violated Section 8(a)(1) and (5) of the Act by refusing "to honor or give effect to the collective-bargaining agreement" between General Motors and the Unions executed on December 7, 1964, effective through December 1, 1967, and from year to year thereafter, if not modified or terminated. The General Counsel grounds this conclusion upon the Supreme Court's decision in John Wiley & Sons, Inc. v. Livingston, 376 U.S. 543. General Counsel also

¹⁷In N.L.R.B. v. Lion Oil Co., 352 U.S. 282, 289 it was said that a purpose of the Act was "to substitute collective bargaining for economic warfare. . . ."

cites *Wackenhut Corporation v. International Union, United Plant Guard Workers of America*, 332 F. 2d 954 (C.A. 9) and *United Steel Workers of America v. Reliance Universal, Inc.*, 335 F. 2d 891 (C.A. 3). The Respondents strongly urge that these cases lend no support to the General Counsel's thesis.

The General Counsel cites no Board decisions in support of his contention. However, in *K. B. & J. Young's Super Market, Inc.*, 157 NLRB No. 17, a Trial Examiner found that a Respondent employer's refusal to honor the contract between its predecessor and the incumbent union constituted a violation of Section 8(a)(5) of the Act. Nevertheless, the Trial Examiner did not affirmatively order the Respondent to honor the contract to which the General Counsel excepted. In a footnote the Board said:

In the circumstances of this case, and particularly because the union gave notice, pursuant to the provisions of the contract in question, of its desire to reopen the contract, and the union has not excepted to the Trial Examiner's failure to order the Respondent to honor the contract, we find it unnecessary to pass upon the question of whether the Respondent also violated Section 8(a)(5) of the Act by its refusal to honor its predecessor's contract."

The implication seems strong that had the facts been otherwise the Board would have found an 8(a)(5) violation in the Respondent employer's failure to honor the contract.

In the case of *California Footwear Company*, 114 NLRB 765, affirmed; *N.L.R.B. v. Lewis*, 246 F. 2d

886 (C.A. 9) the Board held that the Respondent employer's refusal to apply a bargaining agreement, its unilateral establishing of wages and working conditions which differed substantially from those required by the bargaining agreement and its refusal to recognize the Union as the representative of the employees of the alter ego successor constituted a refusal to bargain with the Union. The Board further found that the contract remained in effect until it could be lawfully terminated in accordance with the requirements of Section 8(d) of the Act. See also *Butler Chemical Company*, 116 NLRB 1041.¹⁸

In the *Wiley* case the Supreme Court held "that the disappearance by merger of a corporate employer which has entered into a collective-bargaining agreement with a union does not automatically terminate all rights of employees covered by the agreement and that, in appropriate circumstances, . . . the successor employer¹⁹ may be required to arbitrate with the union under the agreement."

In *United Steel Workers of America v. Reliance Universal, Inc.*, *supra*, relying on the *Wiley* case, the Court

¹⁸While the *California Footwear Company* case, *supra*, and the *Butler Chemical Co.* case, *supra*, concerned alter ego circumstances, it has been pointed out in *N.L.R.B. v. Tempest Shirt Manufacturing Co.*, *supra*, that it is "immaterial" whether or not the succession is "a bona fide business transaction carried out at 'arms length.'" In view of the fact that the Act seeks to avoid or mitigate industrial strife and to foster genuinely insured bargaining relationships, there is no convincing basis for treating "arm's length" successions any differently than "alter ego" or "disguised continuance" successions where the applicability of a predecessor's contract to his successor is concerned. Cf. *Alexander Milburn Co.*, 78 NLRB 747, 750.

¹⁹The Supreme Court's use of the term "successor employer" suggests that the Supreme Court intended that its decision cover "successorships" as well as merger cases.

held that the "collective bargaining agreement, as an embodiment of the law of the shop, remained the basic charter of labor relations . . . after the change of ownership." The action concerned a successorship in which the incumbent union sought a declaratory judgment that the successor was bound by the predecessor's agreement and was obligated to arbitrate alleged grievances arising under the agreement.

In the Wackenhut Corporation case, *supra*, the court opined:

. . . the policy of the national labor laws obligates Wackenhut as the successor employer, to honor the collective bargaining agreement entered into by its predecessor, General Plant.

Referring to the Wiley case, *supra*, the Court commented:

Having in view the objectives of national labor policy reflected in established principles of federal law, the Court held the described interest of the employees [the protection to employees covered by a collective bargaining agreement from sudden change in their employment relationship] outweighs that of the employer and must prevail.

The Court held:

It follows that under the rule of Wiley, Wackenhut is bound by the collective bargaining agreement entered into by General Plant and bound thereunder to arbitrate the union grievances as ordered by the District Court.

Hence the Trial Examiner finds that Respondents Thomas and Ehlers are "bound by the collective bargaining agreement entered into by [General Mo-

tors]."²⁰ Such finding is wholly in harmony with the Supreme Court's teaching in the Wiley case:

"The transition from one corporate organization to another will in most cases be eased and industrial strife avoided if employees' claims continue to be resolved by arbitration rather than by 'the relative strength . . . of the contending forces.'"²¹

Nor may the teachings of the Wiley case be rejected as inapplicable to the present case because it arises under the National Labor Relations Act, as amended, rather than pursuant to Section 301 of the Labor Management Relations Act, 29 U.S.C. Section 185 since a dominating purpose of the National Labor Relations Act, as amended, is likewise the avoidance of industrial strife. Cf. Synco Machine Company, Inc., 62 NLRB 985.

To hold that a successor is not bound that its predecessor's contract is to compel employees to resort to industrial strife to protect benefits which have accrued to them in the employing industry during the period of the predecessorship. Moreover, if such were the case, an expedient is afforded whereby employers through the sale and transfer of assets may not only avoid a continuance of their own contractual obligations but can assure to their successors likewise escape from such obligations. Under such a rule of law unions are encouraged to strike against the predecessor employer prior to the succession and to erect defensive roadblocks in the

²⁰Obviously, disputes as to the specific application of the provisions of the agreement are left for resolution to the methods provided for in the Agreement, one of which is arbitration.

²¹The Trial Examiner's finding also concurs with the underlying objectives of the national labor relations laws "to promote collective bargaining and to help give substance to such agreements through the arbitration process." Carey v. Westinghouse Electric Corporation, 375 U.S. 261, 265.

paths of the peaceful transition of the employing industry from predecessor to successor. Such consequences are incompatible with the Act's desired results.²² Moreover, under such circumstances, through the happenstance of succession, employees are exposed to the loss of seniority,²³ accrued employment benefits and job security. Furthermore, employees who have reached an age²⁴ when their employment is not attractive to employers but whose qualifications for employment otherwise would be suitable, may be cast upon a labor market to flounder about with a strong probability that they will continue unemployed and the dregs of the labor market. Such unhappy results do violence to the humanitarian objectives of the Act and the teachings of the Court to the end that employees may be protected "from a sudden change in the employment relationship."²⁵ Surely such a strained construction of the

²²Section 1 of the Act states "It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions [industrial strife and unrest] to the free flow of commerce."

The Supreme Court has said in *Teamsters Local v. Lucas Flour Co.*, 369 U.S. 95, 104:

The ordering and adjusting of competing interests through a process of free and voluntary collective bargaining is the keystone of the Federal scheme to promote industrial peace.

²³"Seniority has become of overriding importance . . ." *Humphrey v. Moore*, 375 U.S. 335, 346.

²⁴The Respondent Thomas disqualified two General Motors employees for hire because they had reached the age of 64 years.

²⁵In the *Wackenhut* case, the court said:

What the Supreme Court did in *Wiley* was to balance the rightful prerogative of owners independently to rearrange their businesses and even eliminate themselves as employers against the necessity of affording some protection to the employees covered by a collective bargaining agreement containing an arbitration clause, from a sudden change in the employment relationship. Having in view the objectives of national labor policy reflected in established principles of federal law, the court held the described interest of the employees outweighs that of the employer.

Act ought not to be indulged unless clearly compelled by the Act. Indeed the record is barren of any competent or persuasive proof that had the Respondents Thomas and Ehlers adhered to General Motors' collective-bargaining agreement detriment to them would have occurred or that General Motors employees would have been unable to perform the tasks assigned to them.²⁶ The language of *Zdanok v. Glidden*²⁷ Co., 288 F. 2d 99 (C.A. 2) is apposite:

In the circumstances, no detriment to the defendant would have resulted from a recognition by the defendant of rights in its employees corresponding with their reasonable expectations. In that situation, a construction of the contract which would disappoint those expectations would be irrational and destructive.

In view of the teachings in the Wiley case and the Wackenhut Corp. case the "reasonable expectations" of the employees in the present case anticipated a continuation of the collective-bargaining agreement into the successorship.²⁸

Accordingly by withdrawing recognition during the term of the contract and repudiating it in its entirety the Respondents Thomas and Ehlers unlawfully refused

²⁶Had General Motors employees been incapable of performing the tasks assigned to them, the Respondent employers could have sought relief under the terms of the labor agreement.

²⁷The Glidden case, *supra*, involved a plant transfer. The employer refused to transfer certain employees to the transferred plant. Even though the collective-bargaining contract had expired the court held that the seniority rights had "vested" and "could not be unilaterally annulled." This decision demonstrates the utmost importance attached to accrued seniority rights.

²⁸It is noted that the General Motors agreement contained no provision for its termination in event the employing industry was transferred to a successor.

to bargain with the Unions.²⁹ Likewise, the Respondents' unilateral changes in working conditions in derogation of the terms of the contract were a violation of Sections 8(a)(5) and 8(d) of the Act. *California Footwear Co.*, supra; Cf. *C & S Industries, Inc.*, 158 NLRB No. 43.

Third: As noted above the Board certified the Machinists and the Painters for multibranch or establishment units of employees covering General Motors' West Seventh Street and Wilshire Boulevard establishments which unit descriptions were incorporated into labor agreements without substantial variance. There seems little question that on May 11 and 12, 1965, the dates upon which the buy and sell agreements were signed and Respondents became committed to operate the establishments under General Motors franchises, these units were appropriate units for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.³⁰ Not only were these units certified units³¹ but a controlling history of bargaining in such units had been well established. The Trial Examiner finds that at the time of the succession these units were

²⁹See *Hexton Furniture Co.*, 111 NLRB 342, 344; *California Footwear Co.*, supra; *The Butler Chemical Co.*, 118 NLRB 1041; *Royal Cotton Mill Company, Inc.*, 109 NLRB 186; *Sanson Hosiery Mills, Inc.*, 92 NLRB 1102. In the *Hexton Furniture Co.*, supra, the Board held that "by withdrawing recognition from the union during the middle of the contract term, the Respondent unlawfully refused to bargain with the Union."

³⁰Respondent Ehlers in its Brief states at page 12:

The Unions were recognized by G.M. in a multi-plant unit. In view of the 1957 certification and seven years of bargaining on such basis, that is clearly the established unit.

³¹"The Board's determination of the appropriate bargaining unit should not be lightly set aside. *Packard Motor Car Co. v. N.L.R.B.*, 330 U.S. 485." *N.L.R.B. v. Sheridan*, 61 LRRM 2586 (C.A. 2).

appropriate units for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

The multiestablishment units, except for the fact of succession, remained unchanged in any appreciable aspect after the acquisitions. Moreover, the certification of the Unions for such units ran "with the employing industry and [was] binding on [the] bona fide successor company as well as on its predecessor." The Northwest Glove Co., Inc., *supra*, 1700. The Board in the Northwest Glove case further opined,

By its very nature and purpose it [the obligation to bargain] ran with the business; and it is therefore binding on the successor corporation which, with knowledge of its predecessor's obligation to bargain, took over and continued the business.

The obligation to bargain which survived the succession a force was the obligation to bargain within the appropriate unit existing at the time of the succession. Not only were the Respondent employers charged with the knowledge of this obligation but each employer had actual knowledge of its predecessor's obligation to bargain within the multiestablishment units. Yet each employer in the face of such obligation to bargain concluded a buy and sell agreement with General Motors. Thus, having elected to buy into multibranch or establishment units, the Respondent employers stood in no different position than an employer who buys into a multiemployer unit. Cf. *Downtown Bakery Corp.*, 139 NLRB 1352; *K. B. & J. Young's Super Markets, Inc.*, *supra*. Moreover, when successor employers buy into multiestablishment units, as occurred in the present case, the stability of industrial relations which has been accomplished in such multiestablishment units and the

collective and individual rights which have matured in such multiestablishment units warrant a finding that the successor employees are bound to bargain in such multiestablishment units in like manner as did their predecessor. The preservation of the status quo clearly outweighs a bifurcation of the multiestablishment units.

When Respondents Thomas and Ehlers bought into the multiestablishment units consisting of the two General Motors branches or establishments, they consented to participate in bargaining as it existed at the time of the purchase, that is, the Respondent employers consented to be bound to bargain in the multiestablishment units. Cf. *Southwestern Colorado Contractors Association, and its Members*, 153 NLRB No. 75. The attempted withdrawals of Respondents Thomas and Ehlers from such multiestablishment units were untimely and ineffective. The Trial Examiner finds that the multiestablishment units continued as appropriate units for the purposes of collective bargaining after the succession and that the respondent employers are bound to bargain collectively and jointly with the unions in such units.

Fourth: Both by reason of the successorship and the binding effect of the General Motors collective-bargaining agreement Respondent employers were obligated to recognize and bargain with the Unions in conformity with Section 8(a)(5) of the Act. The Respondents, nevertheless, claim that they are excused from this obligation in that they possessed a good faith doubt as to the Unions' majority status. While the Trial Examiner deems, a defense of the good faith doubt, under the circumstances of this case, immaterial in that the General Counsel was not required to reestablish the Unions'

current majority status,³² the record does not support a finding of such a defense for there is no competent proof that the Unions were not in fact the majority representatives during the critical period herein.

Immediately prior to the date of the succession and at the time the Unions attempted to initiate a collective-bargaining relationship, the vast majority of the employees in the contract units were paid up members either in the Painters or the Machinists respectively. Furthermore, the record is barren of any proof that these employees, who for a number of years had executed voluntary check-off authorizations, in fact, were other than voluntary members of the Unions.

In its brief the Respondent Thomas claims a good faith doubt as to the Unions' majority status in that: (1) General Motors employees when "interviewed by the service manager of Thomas none of them mentioned anything whatever about unionization or unions"; (2) "none of them at any time ever demanded that Thomas recognize the union as the bargaining agent"; (3) at no time did any of the employees demand or suggest that any contract that the Unions had with General Motors be applicable to or binding on Thomas; (4) employees hired by Thomas failed to honor the Unions' picket line placed on June 7, 1965, and "the certifications of the Unions were in excess of seven years of age"; and no independent automobile dealership is organized in the Southern California area."

Respondent Ehlers in its Brief grounded its alleged good faith doubt of the Unions' majority status upon

³²See Butler Chemical Company, *supra*, 1050, 1051; Hexton Furniture Company, *supra*; Randolph Rubber Company, Inc., *supra*.

(1) at the time of the election in 1957 General Motors employees at Wilshire voted two to one against the Union; (2) "two of the former General Motors employees volunteered that they were going to drop their union card, and another applicant stated he would not accept employment if Ehlers was a union shop"; (3) "no other automotive shops in the area were organized"; (4) Ehlers' wages were considerably higher than those in the average shop and the working conditions were superior"; (5) "Ehlers was a small, local independent dealer"; (6) "not a single employee of Ehlers, including the former General Motors employees, expressed any desire to be represented by the Unions or either of them"; (7) none of the employees ceased working for Ehlers when the picket line appeared; (8) the Unions did not assert that a majority of Ehlers' employees desired to be represented by them or "file a petition for an election."

Whether a good faith doubt entered into the Respondent employers' decisions to refuse to recognize the Unions is highly speculative since both contend that it is neither a successor nor bound by the Unions' contract. The reasons advanced sound of post-rationalization in the nature of defenses advanced to support a position which would have been pursued in any event. Nevertheless, "an employer may lawfully refuse to bargain only if it can show by objective facts that it has a reasonable basis for believing that the union has lost its majority status since its certification." *United States Gypsum Co.*, 157 NLRB No. 60. The Board added, "it is well settled that change of ownership alone will not be sufficient to justify a refusal on the part of the new employer to bargain with the certified representative of the employees."

In Laystrom Manufacturing Co., 151 NLRB No. 144, the Board rejected an alleged doubt as to the union's majority status based upon a turnover in employees, the absence of union animosity, or independent unfair labor practices, the filing of a petition for an election and the willingness to meet with the union for the limited purpose of trying to seek a conditional contract contingent on the outcome of the election. The reasons advanced by the Respondent employers in the instant case are of similar vein and are for the most part "self-serving assertions which do not provide any objective basis for doubting the Union's continuing majority."

Moreover, a good faith doubt as to the continued majority status of a union may not be bottomed upon a loss of majority which results from the activities of the employer. Cf. *Medo Photo Supply Corp. v. N.L.R.B.*, 321 U.S. 678, 687; *Franks Bros. v. N.L.R.B.*, 321 U.S. 702.³³

Had the Respondent employers honored their bargaining obligations which arose by reason of their successorship, as was stated in the *Chemrock Corp.* case, *supra*, the General Motors' employees "would not have been terminated without the protection afforded them through collective bargaining with their Union about their wages and the continuation of their employment" and "[t]hey would have retained their jobs at least until the Respondent had completely fulfilled its bargaining obligation, and it is well within the realm of pos-

³³In no event can the employer discredit a duly designated bargaining agent by refusing to bargain with it and then avail himself of the bargaining agent's loss of majority which has thus been brought about by the employer's own conduct. *N.L.R.B. v. George P. Pilling & Son Co.*, 119 F. 2d 32, 29.

sibility that as a result of such bargaining they might not have been terminated at all." Hence any alleged loss of majority may be attributed to the Respondent employers' refusal to assume their bargaining responsibilities, as successors. Furthermore, the Respondent employers' attitude toward recognition of the Union and its rejection of the established collective-bargaining relationship was a powerful deterrent against expressions of favor for the Union either on the part of former General Motors employees or newly hired employees. The Respondent employers, having demonstrated a rejection of the Union as a bargaining agent, could hardly expect employees of General Motors to step forward and declare their allegiance for the Unions when they did not know what criterion the Respondent employers were applying in selecting their employees.

Upon the basis of the record as a whole there is presented no competent or persuasive evidence which establishes that the Respondent employers possessed a reasonable basis for believing that the Union did not represent a majority of the employees in the contract units.

In a case concerning a successor employer, as here, fair play requires that we look to the time of the succession to determine the majority status of the Unions. Cf. *N.L.R.B. v. Auto Ventshade, Inc.*, 276 F. 2d 303, 307 (C.A. 5). On May 11 and 12, 1965. Respondent Thomas and Respondent Ehlers respectively executed the buy and sell agreements with General Motors and upon such dates the Respondents respectively assumed the obligations of successors to the interests of General Motors, an event which marked the commencement of the succession. Thus, on such dates the Respondent's

respective obligations to bargain arose and the Respondents became subject to the terms of the Agreement between their predecessor, General Motors, and the Unions.³⁴ Upon such dates there is no doubt that the Unions represented a majority of the employees in the multibranch or contract units. To ignore these dates (May 11 and 12, 1965) and choose later dates upon which to determine the majority status of the Unions not only would invite the successor to adopt means for depleting the majority status but would allow the successor to subtly choose employees who were less likely to be union partisans and to choose enough new employees to exceed the number of the predecessor's employees hired.

Had the Respondent employers been inclined to accommodate the statutory purposes, the proper course would have been "to recognize the prima facie union representation of the employees and to continue to deal with the union, but petition the Board for a new election." *N.L.R.B. v. Auto Ventshade, Inc.*, supra 307. See also *Brooks v. N.L.R.B.*, 348 U.S. 96, 103.³⁵ Having failed to follow this course the Respondent employers depicted a disregard for the Act's directives and the absence of a good faith doubt.

Upon the basis of the record as a whole the Trial Examiner finds that the Respondent employers' defense

³⁴"No request by the Union was required to make the Union's unexpired agreement . . . binding on Respondent." *K. B. & J. Young's Super Markets, Inc.*, supra.

³⁵In the *Brooks* case the Supreme Court said, "If a employer has doubts about his duty to continue bargaining, it is his responsibility to petition the Board for relief, while continuing to bargain in good faith at least until the Board has given some indication that his claim [the union lacks majority status] has merit."

of good faith doubt as to the Unions' majority status is not well taken and that at all times critical herein the Unions represented a majority of the employees in the units found to be appropriate for the purposes of collective bargaining.³⁶

IV. The effect of the unfair labor practices upon commerce

The activities of the Respondents set forth in section III, above, occurring in connection with their operations set forth in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The remedy

It having been found that the Respondents have engaged in unfair labor practices, it will be recommended that they cease and desist therefrom and take the following affirmative action designed to effectuate the purposes of the Act.

The Respondents shall immediately initiate collective bargaining with the Unions as the exclusive representatives of their employees in the units herein found to be appropriate, and shall immediately honor and give effect to the collective-bargaining agreement between General Motors and the Unions dated December 1, 1964, and comply with its terms retroactively commencing May 29, 1965; however, in view of the fact that the Respondent employers may have instituted more favor-

³⁶" . . . a state of facts once shown to exist is presumed to continue unless the contrary is demonstrated" *Harbor Chevrolet Co.*, supra, 1340.

able wages, hours of employment or other working conditions than those negotiated in the agreement, compliance with the terms of the agreement which will cause an abandonment of or a change in any such more favorable wages, hours of employment or other working conditions shall be conditioned upon the affirmative decision of the affected employees as expressed through their collective-bargaining representatives.³⁷

The Respondents, pursuant to the seniority requirements of the above agreement, shall offer all former General Motors employees immediate employment in the positions to which they are entitled under the terms of the agreement, dismissing, if required, any employee hired by the Respondents since the Respondents commenced operations as the successors to General Motors, and make them whole by payment to each of a sum of money equal to that which he or she normally would have earned had the Respondents complied with the seniority provisions of the agreement from the respective dates the Respondents commenced operations as successors to General Motors to the date of the offer of employment, less their net earnings, if any, during the said period. The relief thus provided for shall be computed in accordance with the formula set forth in *F. W. Woolworth Company*, 90 NLRB 289. Interest at 6 percent per annum shall be paid in accordance with the

³⁷See *Beacon Piece Dyeing and Finishing Co., Inc.*, 121 NLRB 953, 963. It is not intended by the recommended remedy herein to limit the parties' recourse to free and voluntary collective bargaining (which is hereby encouraged) as a means of resolving the problems which confront the parties by reason of the succession of ownership from General Motors to the Respondents. Nor is it intended that the recommended remedy impinge upon or supplant the procedures established under the agreement in respect to the resolution of any controversies relating to the interpretation or application of the terms of the agreement.

principle of Isis Plumbing & Heating Company, 138 NLRB 716.

Conclusions of Law

1. The Unions are labor organizations within the meaning of the Act.

2. The Respondents are engaged in commerce within the meaning of Sections 2(6) and (7) of the Act.

3. All mechanics, polishers, washers, lubricators, garage attendants, body and fender men, machinists, elevator operators, trimmers, and maintenance men employed by Thomas Cadillac, Inc. at its 1076 West Seventh Street, Los Angeles, California, establishment and by Lou Ehlers Cadillac at its 5151 Wilshire Boulevard, Los Angeles, California, establishment, excluding branch manager, assistant branch manager, sales manager, used car manager, service manager, assistant service manager, parts manager, assistant parts manager, general foremen, foremen, assistant foremen, inspectors, timekeepers, shop clerks, parts clerks, service salesmen, office clerical employees, new and used car salesmen, tower operator, pickup drivers-parts, guards, operating engineers, supervisors, clerical employees, G. M. Tech students, and work dispatchers, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act, as amended.

All painters employed by Thomas Cadillac, Inc. at its 1076 West Seventh Street, Los Angeles, California, establishment and by Lou Ehlers Cadillac at its 5151 Wilshire Boulevard, Los Angeles, California, establishment, excluding branch manager, assistant branch manager, sales manager, used car manager, service manager,

assistant service manager, parts manager, assistant parts manager, general foremen, foremen, assistant foremen, inspectors, timekeepers, shop clerks, parts clerks, service salesmen, office clerical employees, new and used car salesmen, tower operator, pickup drivers-parts, pickup and delivery men, guards, operating engineers, supervisors, clerical employees, G. M. Tech students, and work dispatchers, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act, as amended.

4. By refusing to recognize and bargain with the Unions as exclusive bargaining agents of employees in the appropriate units, the Respondent Thomas on and since May 11, 1965), and the Respondent Ehlers on and since May 12, 1965, have engaged in, and are engaging in, unfair labor practices within the meaning of Sections 8(a)(1) and (5) of the Act, as amended.

5. By refusing to honor and give effect to the collective-bargaining agreement between the Unions and General Motors dated December 1, 1964, and by changing unilaterally working conditions in derogation of the terms of said agreement the Respondents, since May 29, 1965, have engaged in, and are engaging in unfair labor practices within the meaning of Sections 8(a)(1) and (5), and 8(d) of the Act, as amended.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Sections 2(6) and (7) of the Act, as amended.

RECOMMENDED ORDER

Upon the foregoing findings of fact and conclusions of law and upon the entire record in this case, it is recommended that each of the respective Respondents, their officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to recognize and bargain collectively and jointly with the International Association of Machinists, District Lodge 94, AFL-CIO, and the Automotive, Marine, Production Finishers, Equipment Maintenance and Public Service Painters, Local Union 1798, Brotherhood of Painters, Decorators and Paper Hangers of America, AFL-CIO, as the exclusive representatives of the employees in the appropriate units.

(b) Refusing to honor and give effect to the collective-bargaining agreement between said Unions and General Motors dated December 1, 1964.

(c) Changing unilaterally working conditions of their employees.

(d) In any like or related manner interfering with, restraining, or coercing their employees in the exercise of the rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action which it is found will effectuate the policies of the Act:

(a) Immediately initiate collective bargaining jointly with said Unions as the exclusive representatives of the employees in the previously described appropriate units.

(b) Immediately honor and give effect to the collective-bargaining agreement between General Motors and the Unions dated December 1, 1964, and comply with its terms retroactively commencing May 29, 1965,

in the manner set forth in the section above-entitled "The remedy."

(c) Offer, pursuant to the seniority requirements of the above agreement, all former General Motors employees immediate employment in the positions to which they are entitled under the terms of said agreement, dismissing, if required, any employee hired by the Respondents since the Respondents commenced operations as successors to General Motors and make them whole for any loss of pay they may have suffered, all in the manner set forth in the section above-entitled "The remedy."

(d) Notify the above-mentioned employees, if presently serving in the Armed Forces of the United States, of their right to employment upon application, in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces.

(e) Preserve and make available to the Board and its agents, upon request, for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all other records relevant or necessary to the determination of back-pay due and to employment and related rights provided under the terms of this Recommended Order.

(f) Post at their respective establishments at Los Angeles, California, copies of the notice attached hereto and marked "Appendix."³⁸ Copies of said notice to

³⁸If these Recommendations are adopted by the Board, the words "A DECISION AND ORDER" shall be substituted for the words "THE RECOMMENDATIONS OF A TRIAL EXAMINER" in the notice. If the Board's Order is enforced by a decree of a United States Court of Appeals, the notice will be

(This footnote is continued on the next page)

be furnished by the Regional Director of the Thirty-first Region, shall, after being signed by a representative of the respective Respondent be posted immediately upon receipt thereof and maintained for a period of 60 consecutive days thereafter in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondents to insure that said notices are not altered, defaced, or covered by any other material.

(g) Notify the aforesaid Regional Director, in writing, within 20 days from the date of this Decision, what steps the respective Respondent has taken to comply herewith.³⁹

Dated at Washington, D. C., May 17, 1966.

/s/ LOWELL GOERLICH
Lowell Goerlich
Trial Examiner

further amended by the substitution of the words "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER" for the words "A DECISION AND ORDER."

³⁹If these Recommendations are adopted by the Board, this provision shall be modified to read "Notify the Regional Director for the Thirty-first Region, in writing, within 10 days from the date of this Order, what steps the respective Respondent has taken to comply herewith."

APPENDIX

NOTICE TO ALL EMPLOYEES

Pusuant to

The Recommendations of a Trial Examiner of the
National Labor Relations Board
and in order to effectuate the policies of the
National Labor Relations Act
(As Amended)

we hereby notify our employees that:

We Will immediately initiate collective bargaining jointly with International Association of Machinists, District Lodge 94, AFL-CIO, and Automotive, Marine, Production Finishers, Equipment Maintenance, and Public Service Painters, Local Union 1798, Brotherhood of Painters, Decorators and Paper Hangers of America, AFL-CIO, as the exclusive bargaining representatives of all employees in the bargaining unit described below. The bargaining units are:

All mechanics, polishers, washers, lubricators, garage attendants, body and fender men, machinists, elevator operators, trimmers, and maintenance men employed by Thomas Cadillac, Inc. at its 1076 West Seventh Street, Los Angeles, California, establishment and by Lou Ehlers Cadillac at its 5151 Wilshire Boulevard, Los Angeles, California, establishment, excluding branch manager, assistant branch manager, sales manager, used car manager, service manager, assistant service manager, parts manager, assistant parts manager, general foremen, foremen, assistant foremen, inspectors, timekeepers, shop clerks, parts clerks, service salesmen, office clerical employees, new and used car salesmen, tower operator, pick drivers-parts, guards, operating engi-

neers, supervisors, clerical employees, G. M. Tech students, and work dispatchers.

All painters employed by Thomas Cadillac, Inc. at its 1076 West Seventh Street, Los Angeles, California, establishment and by Lou Ehlers Cadillac at its 5151 Wilshire Boulevard, Los Angeles, California establishment, excluding branch manager, assistant branch manager, sales manager, used car manager, service manager, assistant service manager, parts manager, assistant parts manager, general foremen, foremen, assistant foremen, inspectors, timekeepers, shop clerks, parts clerks, service salesmen, office clerical employees, new and used car salesmen, tower operator, pickup drivers-parts, pickup and delivery men, guards, operating engineers, supervisors, clerical employees, G. M. Tech students, and work dispatchers.

We Will immediately honor and give effect to the collective-bargaining agreement between General Motors and the Unions dated December 1, 1964, and comply with its terms retroactively commencing May 29, 1965, however, any abandonment or change in hours of employment wages or other working conditions, presently in effect, which are more favorable than those negotiated in the agreement shall be conditioned upon the affirmative decision of the affected employees as expressed through their collective-bargaining representatives.

Pursuant to the seniority requirements of the above agreement, we shall offer all former General Motors employees immediate employment in the positions to which they are entitled under the terms of such agreement and dismiss, if required, any employee we have hired since we commenced operations as successors to

General Motors and make such former General Motors employees whole for any loss of earnings they may have suffered by reason of our failure to comply with the seniority provisions of such agreement.

We Will Not, by refusing to bargain collectively and jointly or in any like or related manner, interfere with, restraint, or coerce our employees in the exercise of their right to self-organization, to form, join, or assist the above-named or any other labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right may be affected by the provisions of Section 8(a)(3) of the Act, as amended.

THOMAS CADILLAC, INC.
(Employer)

Dated..... By.....
(Representative) (Title)

LOU EHLERS CADILLAC
(Employer)

Dated..... By.....
(Representative) (Title)

NOTE: We will notify the above-mentioned employees, if presently serving in the Armed Forces of the United States, of their right to employment upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharged from the Armed Forces.

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 17th Floor, U.S. P.O. and Court House, 312 North Spring Street, Los Angeles, California 90012 (Tel. No. 688-5850).

[Title of Board and Cause.]

DECISION AND ORDER

On May 17, 1966, Trial Examiner Lowell Goerlich issued his Decision in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondents filed exceptions and supporting briefs; the Charging Parties filed a brief in support of the Trial Examiner's Decision; and the General Counsel filed a Memorandum in support of the Trial Examiner's Decision and a statement of position.¹

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are here-

¹In view of our disposition herein, we find it unnecessary to pass upon the Respondents' requests for oral argument, or Respondent Ehler's Motion for the Board to take judicial notice of a related Section 301 court proceeding and the Unions' Answer thereto.

by affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and briefs, and the entire record in this case, and hereby adopts only those findings, conclusions, and recommendations of the Trial Examiner consistent with this Decision and Order.

The Trial Examiner found that Thomas Cadillac, Inc., herein referred to as Thomas, and Lou Ehlers Cadillac, herein referred to as Ehlers, were successors to the Cadillac Motor Car Division, General Motors Corporation, Los Angeles Branch, herein referred to as GM, and thus were required to recognize and to bargain jointly with the Automotive, Marine, Production Finishers, Equipment Maintenance and Public Service Painters, Local Union 1798, Brotherhood of Painters, Decorators and Paper Hangers of America, AFL-CIO, herein referred to as the Painters, and the International Association of Machinists, District Lodge 94, AFL-CIO, herein referred to as the Machinists. He based his finding of successorship upon the factual determination that the "employing industry" as it existed before the acquisition by Thomas and Ehlers of GM's Los Angeles sales locations remained the same: namely, the sale of Cadillac motor vehicles, parts and accessories, and the service of such vehicles by former GM employees. He did not find controlling the facts that the transfers of operations were bona fide business transactions carried out at "arm's length," or that only a minority of GM's service unit employees were hired by Thomas and Ehlers. Nor did he place any significant weight on the special factual situation that Thomas' and Ehlers' predecessor was GM, a large corporate enterprise, or that two separate and competing franchise dealers took over locations of a prior multi-branch unit.

The Respondents contend, in pertinent part, that they are not successors to GM, and are in effect new and independent business entities, markedly different from the former GM operation. Ehlers and Thomas contend that they have no obligations to deal with the Unions, or to assume the Unions' contract with GM, and in no way led GM, the Unions, or the employees to believe that they had such obligations. All employees, they argue, including former GM employees, were hired on the basis of merit without regard to prior union membership, and they assert that the contract unit no longer exists. For the reasons discussed below, we find merit in the Respondents' contentions that they are not under any obligation to bargain with the Unions herein involved.

The record shows that, in 1949, GM opened a branch retail sales outlet for the sale of Cadillac motor vehicles, parts, and accessories and the servicing of such vehicles at West Seventh Street (Bixel), and, in 1954, opened a similar branch at Wilshire Boulevard (Wilshire), in Los Angeles, California. In addition, GM also operated, as part of its sales operation in the Los Angeles area, a used car lot at South Vermont. Pursuant to a consent-election agreement, the Machinists was certified on August 1, 1957, for a single unit consisting essentially of all shop employees, including painters, at both the Bixel and Wilshire locations. A collective-bargaining agreement was executed between GM and the Machinists on October 17, 1957, to expire in October 1958, covering the employees at both locations.

On November 6, 1958, the Painters was certified, after a Board-conducted election, for a single unit of auto body "painters" at both the Bixel and Wilshire

locations. Thereafter, the Machinists and Painters bargained jointly with GM for a single collective-bargaining agreement covering the units represented by both Unions. The current contract was executed on December 1, 1964, and was to remain "in full force and effect without change until December 1, 1967." The Agreement covering the two locations provided for common wages, fringe benefits, and grievance procedures. Common seniority lists were maintained by occupation, and there was no loss of seniority in transfers between occupations under the conditions set forth in the contract. In other ways the contract provisions treated the two branches as a single multiplant unit.

GM decided to cease the retail sale of Cadillac automobiles in Los Angeles in January 1965, and determined to transfer its operations to independent franchise dealers. On May 10, 1965, GM advised the Unions by letter that on June 1, 1965, Thomas would take over the Bixel location and Ehlers would take over the Wilshire location. The following week, the Unions separately requested Ehlers and Thomas to meet with them "to clarify the rights of the employees" of GM. The Unions were informed that the question of recognition was premature. On May 28, 1965, all employees in the bargaining unit were terminated by GM.

Prior to May 28, 1965, GM employed approximately 117 employees in the contract unit, referred to as "service departments." At Bixel there were 75 such employees, and all mechanics except 2, and all painters, except 1, were members of their respective unions; at Wilshire there were 42 such employees in the unit, and only 1 mechanic was not a union member.

Thomas and Ehlers commenced operations as franchised Cadillac dealers on June 1, 1965, as competing enterprises. Former GM service employees were required, the same as other applicants, to submit applications for employment before being interviewed. Of the 63 service department employees hired by Thomas, only 16 were former GM employees, including 1 painter. Out of a supervisory staff of 7, only 3 had been service supervisors for GM. A used car salesman for GM became an assistant used car manager. GM's Los Angeles supervisor of accounting became Thomas' business manager. Of the 35 service department employees employed by Ehlers, only 11 were former GM unit employees; those were hired on the recommendations of GM's Wilshire service manager and foreman. Ehlers' managers consisted of Lou Ehlers as manager, two employees who had worked with Ehlers at his prior dealership as business manager and general sales manager, respectively, and a former GM Wilshire employee as new car sales manager. In the service department, the service manager and the foreman were not the same individuals who had previously held such positions when GM operated Wilshire. Respondents' contention that employees were hired on the basis of ability is uncontroverted.

In view of the foregoing facts, we find that Thomas and Ehlers did not take over or succeed to GM's bargaining unit. As indicated above, neither employed a significant number of service employees who had worked for GM, and the supervisory hierarchy bears little resemblance to that formerly existing under GM. Moreover, it is clear that both Thomas and Ehlers selected their employees herein involved on the basis of skill

and ability, and were in no way influenced by union membership of the job applicant. Accordingly, in the circumstances, the Respondents had no obligation to bargain with the Unions with respect to terms and conditions of employment of employees formerly employed by GM, or with respect to those employees whom they hired after taking over the separate dealer franchises.² We therefore find that the Respondents have not violated Section 8(a)(1) and (5) of the Act,³ and we shall order the complaint be dismissed on its entirety.⁴

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the complaint herein be, and it hereby is, dismissed in its entirety.

Dated, Washington, D. C. Mar. 29, 1968.

FRANK W. McCULLOCH, Chairman
JOHN H. FANNING, Member
SAM ZAGORIA, Member
NATIONAL LABOR RELATIONS
BOARD

(SEAL)

²Cf. *Overnite Transportation Co. v. N.L.R.B.*, 372 F. 2d 765 (C.A. 4).

³Member Fanning also agrees with the concurring opinion of Members Jenkins.

⁴In view of our conclusions above, we deem it unnecessary to pass upon certain other findings and recommendations of the Trial Examiner to which the parties have taken exceptions.

Member Jenkins, concurring:

I agree with my colleagues that the complaint in this case should be dismissed. I also agree with their conclusion that neither Thomas nor Ehlers is a successor employer to the original General Motors retail enterprise at the Bixel and Wilshire locations in Los Angeles, California. However, in reaching this conclusion, in addition to those facts relied on by my colleagues, I also rely on the totality of the evidence present in the record including evidence relating to those events and actions of the parties both before and after Thomas and Ehlers commenced operations as competing franchised Cadillac dealers on July 1, 1965.

I find it significant that the transfer of operations were bona fide business transactions carried out at "arm's length" and that prior to the transfer GM not only notified the Machinists and Painters concerning the contemplated change, but met, discussed, and bargained with the Unions regarding the change. Thus, early in 1965, GM wrote the Machinists and Painters concerning the contemplated change to arrange meetings to discuss the results of the transaction. Meetings with the Unions resulted in a "Supplement Agreement," dated April 28, 1965, which provided that, in anticipation of GM's closing Bixel and Wilshire, employees who left to take another job could voluntarily be laid off out of line of seniority. In addition, GM agreed to give employees vacation and absence pay prorated to the date of termination, lump sum payment of amounts ac-

cumulated under the GM Income Security Plan, retirement benefits for employees having reached the permissible retirement age of 60 and having the minimum 10 years of service, and pensions to those between the ages of 55-60 who otherwise qualified for retirement. A sizable number of employees took advantage of these provisions.

I also find significant that the day-to-day operational practices of Thomas and Ehlers differ not only from each other but from GM. Unlike GM, neither uses a janitorial nor guard service, but hired their own employees for this work. GM had four car attendants in the unit that picked up and delivered customers' cars. This service was discontinued. GM did all its own body work, while both Thomas and Ehlers contract out some body work. GM maintained a use car lot and disposed of most car trade-ins itself. The operations of this lot was discontinued on May 28, 1965, by GM, and Thomas and Ehlers now dispose of most car trade-ins through wholesalers. The Respondents also use sources of financing in the sale of new cars different from GM's sources.

Furthermore, while it is true that the Respondents sell and service the same products as GM, their overall operations bear little resemblance to that of their predecessor. I do not think this factor can be ignored. GM's Los Angeles sales outlets, unlike those of Respondents, were intimately tied in with its entire nationwide manufacturing and sales operations. Thus, the controller, the purchasing agent, the personnel man-

ager, the supervisor of accounting, used car manager, and credit manager while located at the Bixel location were carried on GM's Detroit payroll, and were subject to Detroit's overall direction and supervision. Indeed, GM's agreement with the Unions was patterned after its nationwide contract with another union. Also, under the contract covering GM's operation herein involved, an employee continued to accrue seniority thereunder while employed in any GM plant on national defense work. The holiday, vacation, and paid absence eligibility computations were based upon employment in any GM plant. The contract also included GM's national Pension Plan, Insurance Program, and Income Security plan. Bixel and Ehlers, of course, operate as independent and competing entities.

Thus, while I agree with my colleagues that Thomas and Ehlers did not succeed to the business operated by GM, and that the operations at Bixel and Wilshire are not the same "employing industry" as that engaged in by GM, I do so on the totality of the evidence and not upon the more narrow factual grounds set forth in their opinion.

Dated, Washington, D. C.

Howard Jenkins, Jr., Member
NATIONAL LABOR RELATIONS
BOARD

[Title of Board and Cause.] [1]

BRIEF OF
RESPONDENT THOMAS CADILLAC, INC.
IN SUPPORT OF EXCEPTIONS

I

Statement of the Case and Summary of Facts

1. ABBREVIATIONS, as used hereafter in this Brief: The Cadillac Motor Car Division of General Motors Corporation will be identified as "G.M."; Thomas Cadillac, Inc., will be identified as "Thomas"; Lou Ehlers Cadillac will be identified as "Ehlers"; International Association of Machinists will be identified as "Machinists"; Automotive, Marine, Production Finishers, Equipment Maintenance and Public Service Painters will be identified as "Painters"; the former G. M. Branch location at 1076 West Sventh Street, Los Angeles, California, will be identified as "Bixel"; the former G. M. Branch at 5151 Wilshire Boulevard, Los Angeles, California, will be identified as "Wilshire"; and the former G.M. Used Car Lot at 501 South Vermont, Los Angeles, California, will be identified as "Vermont".

2. THOMAS CADILLAC. Thomas Cadillac is a California corporation wherein LaRue Thomas is President and his brother Kenneth R. Thomas is the Secretary-Treasurer. They are the only two officers and they are the only two shareholders (332-333).

For many years LaRue Thomas and his brother Kenneth R. Thomas have been in the automobile business. They started in 1932 and have had franchises with factories prior to the time that Thomas Cadillac, Inc., was

franchised by G.M. In 1943 under a Partnership known as Cecil L. Thomas & Sons, La Rue Thomas was granted a franchise to sell Cadillac automobiles, GMC trucks and Oldsmobile automobiles (333). They operated that business until May 31, 1965, or June 1, 1965 (334). Thomas Cadillac, Inc., commenced operations as a Cadillac dealer franchised by G.M. on June 1, 1965, in the Sales Department and commenced the Service operation [2] on June 7, 1965 (335). They had terminated their franchise in Harbor City because General Motors Corporation closed that point as a Sales point for Cadillac automobiles (335).

For many years while in the San Pedro and Harbor City area Mr. LaRue Thomas had relations with the International Association of Machinists and the Teamsters Union. He was a member of the San Pedro Dealers Association and was on a committee that negotiated union contracts with unions (336). His relationship with the unions has always been on an excellent basis (see Stipulation of Counsel for the Machinists, page 337, line 15 through line 17).

Commencing in March of 1965 Thomas began negotiating with G.M. relative to procuring a franchise for Bixel and relative to purchasing certain designated assets of G.M. at its Bixel location. During the month of June, 1965, Thomas became a franchised dealer at Bixel and concluded negotiations with G.M. (338). On June 7, 1965, La Rue Thomas, individually, assigned his contracts with General Motors to the corporation he headed up, Thomas Cadillac Inc., (339). In the negotiations with G.M. neither La Rue Thomas, individually, nor Thomas Cadillac, Inc., assumed any of the liabilities under a Labor Agreement that G.M. had with any

unions at G.M.'s Bixel location when G.M. operated same (339-340). With respect to accounts receivable La Rue Thomas had some discussion with G.M. relative thereto and purely on a basis of accommodation for G.M. purchased the accounts receivables (340).

During his negotiations with G.M. Thomas was apprized by Cadillac that there was a Labor Agreement with the unions and was advised by Cadillac that there were no successor rights in the Agreement and that he would not be bound by it (340). As stated, Thomas commenced operation of the Sales Department on June 1, 1965, and of the Service Department on June 1, 1965. Thomas employed all new executive personnel and department heads. [3] With respect to the foremen in the shop, Thomas employed only three that had formerly been employees of G.M. Thomas had been an independent dealer for many years and knew he could not operate a successful dealership in the same manner as a large factory such as G.M. had done and therefore it was necessary for Thomas to completely reorganize the supervisory personnel and job classifications. G.M. in its operation of the two factory branches in Los Angeles, had a Los Angeles branch manager, a comptroller, a personnel manager, a purchasing agent, a used car manager, a supervisor of accounting and other managerial and administrative personnel that performed functions for both Wilshire, Vermont and Bixel. Under the operation by Thomas, his executives, department heads and supervisory personnel perform services only for Thomas as an independent franchised dealer at the Bixel location. Other than foremen in the shop two supervisors employed by Thomas formerly worked for G.M. but under a different job classifica-

tion. One was Wesley Euglow who was a used car salesman with G.M., with Thomas he is assistant used car manager (344). Second is Joseph R. Toombs who with G.M. was a supervisor of accounting but with Thomas he became business manager (344). As to the employees in the shop on June 7, 1965, Thomas employed sixty-three (63) service employees, approximately sixteen (16) of whom had been employed by G.M. at Bixel. Other employees were procured from other dealerships, advertising therefore, word of mouth and from the outside.

Mr. La Rue Thomas testified that he was familiar with retail sales and service automotive business generally in Southern California and testified that such a business is administratively composed of a Service Department, Parts Department, Clerical Department and a Sales Department (347). He further testified that there is an interchange of employees from one department to another and that as employees are trained they go from one phase of the business to another (347-349). [4]

It should be pointed out here that none of the parts employees of G.M. were represented by either of the unions involved herein, to wit, the Machinists and the Painters (349). Employees in the service department are sent to training programs conducted by G.M. (353). All of the employees in the Service Department enjoy substantially the same training benefits and fringe benefits (353-354).

3. THE RELATIONSHIP BETWEEN THOMAS AND G.M. After Thomas became a franchised Cadillac dealer its relationship to G.M. was exactly the same as any other franchised dealer in the

United States. Thomas was authorized to sell and service Cadillac automobiles and to purchase Cadillac parts from General Motors Corporation. General Motors Corporation was and is not a stockholder of Thomas, has no investment in Thomas Cadillac and has only the contractual relationship of the Franchise Agreement. No person employed by General Motors has any duties with respect to Thomas and no persons employed by General Motors are officers or directors of Thomas. Thomas did not assume any contractual liabilities of G.M. nor did it purchase or acquire any of the assets of G.M. other than designated in the Buy and Sell Agreement (G.C. Exhibit 14 (a), 14 (b), and 14 (d), except the accounts receivables as an accommodation at a later date.

4. DISTINCTIONS BETWEEN GENERAL MOTORS AND THOMAS. Thomas operates as a completely independent franchised dealer. G.M. operated Bixel as a factory outlet, G.M. being primarily in the business of manufacturing motor vehicles and other products. Thomas does no manufacturing. G.M. was not in the leasing business whereas Thomas operates a leasing business out of the Bixel address (359). Thomas did not acquire any assets of General Motors located at the Wilshire address nor the Vermont address (366).

When G.M. operated the three locations described as Bixel, Wilshire and Vermont the central accounting office was located at Bixel (291). All summarization of accounting was done there and the general ledgers were kept at the Bixel address of G.M. (291).

The financial statements for both branches of G.M. were prepared by the accounting department at Bixel

(292). There was a general manager (L.G. Ferzackerly) which was in charge of both the Bixel store and the Wilshire store (292). The branches had managers (293). Supervision over the general manager was conducted from Detroit (293-294). Both branches had the one credit manager (294). Accounts receivable and all billing was done for both branches from one location (294). General Motors had one comptroller, a man by the name of T.E. Cliff (295) and all administration so far as the comptroller's office was handled by Cliff out of the Bixel address (295). Sublet work was handled by a purchasing agent for both locations from the Bixel address (296). There was an interchange of employees between the two establishments (296). Building maintenance for both buildings was done by a building engineer and assistant (296). All the payroll and hiring was done at one location for both stores (297). Top management was paid directly out of Detroit, offices of General Motors Corporation (298).

Accordingly, it can be concluded that the G.M. factory stores in Southern California were integrated, one with the other. All used car reconditioning was done at the Bixel location for outlet at all three locations, to wit, Bixel, Wilshire and Vermont. Under the operation by Thomas, Thomas had nothing to do with the operations by Ehlers at Wilshire nor any operation by anyone at the Vermont address. Thomas strictly operates an independent franchised dealership at the Bixel street location.

5. UNION BACKGROUND AND LACK OF DEMAND.

(1) Since sometime in 1957 the Machinists and Painters had union negotiations with G.M. During the negotiations proposals were made concerning language to be inserted into the Agreement [6] regarding successorship. At that time said language was rejected by G.M. primarily on the basis that the contract could not continue in effect under any successor to G.M. This specific issue was raised at one time during the negotiations.

In 1964 G.M. and the unions entered into a contract, which contract is in evidence as General Counsel's Exhibit 6. The unit described in said contracts are as follows: mechanics, polishers, washer, lubricators, painters, garage attendants, body and fender men, machinists, elevator operators, trimmers and maintenance men, (Article I, Section 1). The certification by the National Labor Relations Board excluded pick-up and delivery men, service writers, dispatchers and parts clerks. Subsequently comment will be made herein regarding the appropriateness of the unit as described above.

(2) Sometime in early 1965 G.M. decided to go out of the retail business in California. Mr. Pais of G.M. had several meetings with the business agents of the unions concerning the closing of the retail branches. On May 10, 1965, Mr. Pais informed the unions that the negotiations had been completed for the establishment of independent franchised dealers and informed the unions of the names of the individuals (Mr. Thomas and Mr. Ehlers) who would be the franchised dealers or head-up the companies that would be fran-

chised as the dealers at the Bixel address and at the Wilshire address. Thereafter, on May 28, 1965, G.M. terminated all of its employees at the Bixel and Wilshire addresses. (see Stipulation Page 77 of Transcript).

6. PURPORTED DEMAND BY UNIONS FOR RECOGNITION. It is respectfully submitted that at no time did either of the unions involved make a sufficient demand upon respondent Thomas to recognize the unions as the exclusive bargaining agents of the employees of the service department in and/or the appropriate unit. In reading General Counsel's Exhibit 12 (a), 12 (b), 12 (c) and [7] 12 (d), to wit, the letters from Counsel for the unions it should be noted that the prime and prevalent theme of said letters was to the effect that the unions desire that La Rue Thomas would bind himself or his company to the Labor Agreement that the Machinists and Painters had with G.M. In his letter to Mr. La Rue Thomas on June 9, 1965, Counsel for the Painters allege that Thomas Cadillac was in violation of the existing collective bargaining agreement between Painters Union and Cadillac Motor Car Division of General Motors Corporation and requested that the issue of the application of the Agreement to Thomas Cadillac agency be submitted to arbitration in accordance with the Agreement. Accordingly, at all times what the unions sought was to have a voluntary recognition of the contract by Thomas and if he or his company failed to do so then the unions would proceed with legal action. This they did by filing an action in the Superior Court for the State of California, County of Los Angeles, in the latter part of June, 1965. Said court action is still pending.

With respect to the letters identified above Mr. Thomas submitted them to a Labor Relations Consultant, one Mr. Al Heinz, who advised Mr. Thomas that Mr. Thomas had no responsibility to answer those letters and Mr. Thomas acted upon the advice of the Consultant and accordingly felt no obligation whatsoever to respond to said letters (366-367). Reading the letters in their entire context, no demand for bargaining was ever made by the unions, demand was made to either abide by the contract or submit it to arbitration and accordingly Thomas would have no legal obligation to answer said letters. It is, of course, necessary that there first be a proper demand for bargaining by the unions before there can be a violation under Section 8(a)(5) of the Act.

Further it should be pointed out that at no time did the employees in the service department suggest the union or represent that they wanted to be represented by a union (366). [8]

II

Issues Involved

1. Good Faith Doubt re Majority Status.
2. No Demands by Unions.
3. Thomas Not Bound by Contract.
4. Appropriate Bargaining Unit.
5. "Successor" Issue.

III

Argument

1. With respect to Exception No. 1 the Board's attention is invited to paragraph II of this Brief which sets out the issues.

2. With respect to Exception No. 2, Respondent excepts to said Finding of Fact on the grounds that it is incomplete and does not set out the true characterization of the business of the Cadillac Motor Car Division of General Motors Corporation. The characterization of the business of General Motors Corporation is set out under paragraph I, sub-paragraph 4, of this Brief, commencing on page 5 at line 23 and ending on page 6 line 28 with appropriate references to the Transcript.

3. With respect to Exception No. 3, as to the characterization of the business of Respondent Ehlers Cadillac, Respondent Thomas herein excepts to the inaccuracy of the Finding as that Finding might affect Respondent Thomas.

4. With respect to Exception No. 4, which is the Finding with reference to the characterization of the business of Respondent Cadillac, Respondent herein sets out the characterization of the operation of Thomas Cadillac as set out in paragraph I, subparagraph 2, of this Brief commencing on page 2 at line 19 and concluding on page 5, line 7, with appropriate references to the Transcript.

5. With respect to Exception No. 5, Respondent excepts to said Finding of Fact on the grounds that it is incomplete in [9] that it does not make a Finding as to the third location of the Cadillac Motor Car Company, to wit, the used car lot on Vermont Avenue and does not show the integration. In support thereof Respondent herein incorporates, by reference, the facts as set out in this Brief under paragraph I, subparagraph 4, commencing on page 5, line 23 and concluding on page 6, line 28, with appropriate references to the Transcript.

6. With respect to the Exception No. 6 and the Finding of Fact appearing on page 4, line 17 of the Trial Examiner's Decision wherein he finds that the Painters were included in the Agreement of the Machinists, Respondent believed that said Finding is inaccurate as the Painters were represented by the Automotive, Marine, Production Finishers, Equipment Maintenance and Public Service Painters, Local Union 1798.

7. With respect to Exception No. 7, Respondent submits that the Finding is contrary to the undisputed evidence. Reference is hereby made to page 366 of the Transcript commencing at line 8 and extending through page 367, line 6, wherein Mr. Thomas was asked if he ever received any letters from the Union and he said that he did. When asked what he did with those letters he said he turned them over to a Labor Relations Consultant, one Mr. Al Heinz, who advised him that no response was necessary, when asked by the Trial Examiner if he acted upon his advice the witness answered that he did.

8. With respect to Exception No. 8, as to the Finding that the witness Toombs could recall but one instance of an interchange of employees; it is submitted that said Finding is taken out of context with respect to the issue of the control that General Motors exercised over all three of its retail locations in Los Angeles. Reference is hereby made to the Transcript with respect to the testimony of Toombs commencing at page 290, line 1 through page 308, line 21, which shows the modus of operation of [10] General Motors Corporation when it operated the three retail outlets.

9. With respect to Exception No. 9, reference is hereby made to the grounds for the exception to No.

8 above as to the operation of General Motors Corporation.

10. With respect to Exception No. 10, Respondent respectfully excepts to the Finding of Fact on the grounds that the undisputed evidence shows that the Direct-Dealer Selling Agreement or Franchise Agreement issued to Thomas by General Motors is the same standard Selling Agreement or Franchise Agreement issued by General Motors to all Franchised Cadillac Dealers throughout the United States.

11. With respect to Exception No. 11, Respondent excepts to the Finding of Fact of the Trial Examiner in that it mentions only part of the service supervisory staff and completely ignores any and all other supervisors of said Respondent.

12. With respect to Exception No. 12, as to the characterization of the business of Thomas Cadillac, once again reference is hereby made to paragraph I, sub-paragraph 4, of this Brief which sets out the operation of Respondent Thomas Cadillac with appropriate references to the Transcript.

13. With respect to Exception No. 13, Respondent Thomas excepts to said Finding as said Finding might affect Respondent Thomas.

14. With respect to Exception No. 14, Respondent Thomas excepts to the Concluding Findings as set out in Respondent's Exceptions which are discussed in the Argument hereinafter set out.

15. With respect to Exceptions No. 15 and 16, Respondent excepts to the effect of the alleged "Unfair Labor Practices" and to the "Remedy" generally and specifically.

IV

Concluding Arguments [11]

1. GOOD FAITH DOUBT re MAJORITY STATUS. It is respectfully submitted that at all times Thomas had a good faith doubt that the union represented a majority of the employees at Thomas Cadillac. As has heretofore been noted when the former employees of G.M. were interviewed by the service manager of Thomas none of them mentioned anything whatsoever about unionization, or unions, none of them at anytime ever demanded that Thomas recognize the union as the bargaining agent and at no time did any of the employees demand or suggest that any contract that the unions had with G.M. be applicable to or binding upon Thomas.

Further it should be noted that picketing began at Thomas on June 7, 1965, and has continued since then. All of the former employees of G.M. that were hired by Thomas after termination by G.M. have refused to honor any picket lines set up by the unions, have crossed the picket lines and have worked at the Thomas dealership. In addition thereto the certification of the unions were in excess of seven years of age. No independent automobile dealership in the Southern California area is organized with the exception of the Harbor area known as San Pedro-Wilmington area (225).

In Rohlik, Inc., 145 NLRB 1236, the Board stated as follows: "After the certification year has elapsed, there is a rebuttable presumption, derived from the certification, that the certified union continues to be the majority representative of the employees in the unit, and an employer, including a successor employer, is ob-

ligated to continue to recognize and bargain with the certified union. However, evidence sufficient to support a good faith doubt of the union's majority status will serve as a defense to a refusal-to-bargain charge."

This case restates and reaffirms what has been Board law for a long time. Under all the circumstances Thomas was justified in believing that the vast majority of his employees were not represented by any unions nor did they desire such representation. [12] Hence, it is submitted that Thomas did, in fact, have a good faith doubt that the unions involved herein represented a majority of his employees in the appropriate unit of the service department in the automotive sales and service industry.

2. NO DEMANDS BY UNIONS. It is axiomatic and elementary that in order for an 8 (a)(5) Refusal-to-Bargain Charge to be sustained, it must be shown that the unions claiming to represent a majority of the employees of an employer must demand bargaining rights in an appropriate, or the appropriate unit for the industry.

The National Labor Relations Board has determined that the appropriate unit in what the Board describes as the retail automotive sales and service industry would include all employees in the service department including, mechanics, metalmen, parts men, lot boys, car jockeys, service writers, dispatchers, lubrication men and all assistants or helpers to any of the classifications mentioned in this sentence.

The Austin Ford, Inc. Case was decided in 1962 and is reported at 136 NLRB 1398. In that case the Machinists Union petitioned for a unit consisting of

"mechanics, their helpers and apprentices", the Board held that the mechanics are not such a distinct and homogeneous group as to be an appropriate unit in the retail automotive sales and service industry. The Board went on to state that all employees in the service department constitute the appropriate unit in said industry, that there is an inter-relationship between the employees in the service department, that there is progression from one job classification to another and that in the servicing of automobiles all of the employees in the service department have a relationship with each other with respect thereto. In the spring of 1965 the International Association of Machinists filed Petitions with the National Labor Relations Board for the 31st District in Los Angeles, California, in six or seven automotive dealerships in the Southern California [13] area seeking a unit consisting of "mechanics, their helpers and apprentices". One of the Petitions so filed was against Tate Motors in Pomona, California, a distance of about forty miles from Los Angeles, Tate Motors is an authorized Cadillac dealer the same as Thomas. All of these cases went to hearing and the first case decided by the Board was the case of W. R. Shadoff, 154 NLRB No. 77, which was decided by the Board on September 3, 1965. In that case the Board reaffirmed their holding of the Austin Ford Case to the effect that the appropriate bargaining unit in the retail automotive sales and service industry would include all of the employees of the service department. The subsequent cases decided by the Board made reference to the Shadoff case and the holding stands today.

Here the charging parties would exclude from the employees at Thomas the service writers, the parts

men, and the tower operator (sometimes called the dispatcher) from the unit. Further, in regard to the inappropriateness of the unit that the charging parties seek they would put some of the employees under the jurisdiction of the Machinists and some under the jurisdiction of the Painters.

Were the charging parties to prevail in their contentions as to unit, they would, (1) have a unit that the Board has found inappropriate in the involved industry, and (2) would have two units for the service department in said industry. Either of said results would make the unit inappropriate. As the Board stated in *Page Aircraft Maintenance, Inc.*, 123 NLRB 159, 43 LRRM 1383 (1959): "It also appears, and we find, that the union's July 25 request for bargaining described an inappropriate unit, because the request combined production and maintenance personnel with office clerical in a single unit. We therefore hold that the union did not make a valid request upon Page to bargain for an appropriate unit or units. In the absence of a valid request for bargain- [14] ing it cannot be said that Page violated Section 8 (a)(5) of the Act".

In the Page Case the complaints were dismissed.

3. CASES DISTINGUISHED. Throughout this matter Counsel for the General Counsel made reference to and apparently relied heavily upon the Chemrock and Wiley cases.

The Chemrock case, *Chemrock Corp.*, 151 NLRB 111, 58 LRRM 1582, was decided on March 24, 1965. There the Board held that the seller's employees could be regarded as employees of the purchaser where the only substantial change brought about by the sale of a

business enterprise is the transfer of ownership. In that case and after the sale the company continued to produce the same products using the same machinery with the same employees as had the selling company. The supervision was also the same. Here the company recognized a union represented a majority of its production and maintenance employees but refused to recognize five employees who were truck drivers and represented by the Teamsters. The Board found that there was no significant change between the predecessor and the buying successor except the ownership of the enterprise.

The case is distinguishable from the Thomas case in that Thomas did not at any time contemplate hiring all of the employees of General Motors but interviewed some of the employees with a view in mind of hiring those employees who were best qualified and would fit into the operation as conducted by Thomas.

In the Chemrock case the drivers all desired to be represented by the Teamsters. In the case of Thomas none of the employees at any time ever stated a preference or desire to be represented by any union and, in fact, the employees that were hired elected to cross the picket lines after the charging parties set up picket lines on June 7, 1965. Further and as noted above the unions at no time made an appropriate demand upon Thomas to recog- [15] nize them and at no time conveyed any specific information to Thomas relative to union membership with respect to the employees employed by Thomas either as to employees formerly employed by G. M. or employees hired by Thomas from other sources. Further in Chemrock, Chemrock took over in tact the employees represented by the Interna-

tional Association of Machinists in the production and maintenance department.

It is apparent that what the General Counsel is attempting to do in the case is to extend the doctrine of Chemrock, to broaden the doctrine of successorship, and to in effect make new law. Respondent Thomas does not construe that Chemrock decision as being so broad in scope as to cover every situation where a business enterprise is sold.

In Union Texas Petroleum, Div. Allied Chem. Corp., 153 NLRB No. 71, decided after the Chemrock case, it was held that a purchaser had no obligation to bargain with a union which represented the seller's employees where the purchaser did not hire a majority of the employees of the seller and the purchaser had no union animus.

Accordingly, it is submitted that Chemrock is distinguishable from Thomas by virtue of the nature of the transaction of the purchase by Thomas, the unit involved and the lack of proof that a union or any unions represented a majority of the employees of Thomas Cadillac.

Also relied heavily upon by Counsel for the General Counsel is the case of John Wiley & Sons, Inc., vs. Livingston, 367 U.S. 543, 84 S. Ct. 909, decided in 1964. Here there was a successor of a smaller company by a larger company, a set of facts not analogous to the case at bar. All of the employees of the smaller company were hired by the larger company under the merger and all of the employees continued to work in substantially the same supervision. The Court held that there was therefore a whole- [16] sale transfer of the

small company's employees (Interscience) to the Wiley operation.

It is also anticipated that Counsel for the General Counsel, and the Charging Parties, place reliance upon the case of *Wackenhut Corp. v. International Union, United Plant Guard Workers*, 332 F.2d 954, decided by the Ninth Circuit Court of Appeals in 1964. In the *Wackenhut* case a limited partnership operated a guard service. The employees were covered by a union contract. The purchasing company purchased from the selling company all of its assets including leaseholds, contracts with customers and customer lists, all assignable permits and licenses, trademarks and tradenames. The purchasing company also assumed all of the monetary liabilities of the selling company. Some of the supervisory personnel of the selling company became employees in substantially the same positions for the purchasing company. Most of the employees of the selling company commenced working for the purchasing company wearing the same uniforms and performing the same duties as prior to the acquisition. Further in this case the purchaser was willing to accept the union as the bargaining agent for his employees but was not willing to accept the contract in existence. The Court held that the purchaser was bound by the arbitration clause based upon the similarity and continuation of operations across the change in ownership and held that such similarity and continuation of operations was evidenced by the wholesale transfer of the employees from the seller to the purchaser.

The facts of course set out hereinabove with respect to Thomas are completely distinguishable from the facts in the *Wackenhut* case. Accordingly, it is submitted

that Wackenhut could not and would not apply to Thomas.

4. THOMAS NOT BOUND BY CONTRACT.

As stated above Thomas did not assume any of the obligations of G.M. pursuant to the collective bargaining Agreement that G.M. had with the Charging [17] Parties. Further Thomas was not a party signatory to said Agreement nor did Thomas participate in any negotiations when said Contracts were reached. It was argued, however, by Counsel for the General Counsel that Thomas would have a duty to honor the Contracts and that said duty is one either imposed under the Act, pursuant to Section 8 (a)(5) or one imposed by law. An examination of the provisions of the Act discloses that the Act does not support the argument made by Counsel for the General Counsel and with respect to the position of Counsel for the General Counsel that the obligation is imposed by law. The cases as hereinabove discussed do not support his position. In the 1952 case of *International Longshoremen's and Warehousemen's Union v. Juneau Spruce Corporation*, 342 U.S. 237, 72 S.Ct.235, affirming the decision of the Ninth Circuit Court of Appeals, it was held that a purchaser of a business, or the assets thereof, was not bound by the seller's union contract where the purchaser has not agreed to be bound by such agreement and where he has not adopted the agreement.

5. THE ALAMO WHITE TRUCK CASE AND THE STEPP'S FRIENDLY FORD CASE.

In the case of *NLRB v. Alamo White Truck Service, Inc.*, 273 F.2d 238, decided by the Fifth Circuit Court of Appeals in 1959, we have a situation identical to the present case. The White Motor Company, which manufactures trucks, decided to terminate its retail sales

and service branch operation in San Antonio, Texas. White Motor Company sold to the purchaser an inventory of parts, tools, shop and office equipment and franchised the purchaser as a dealer of White Motor Company trucks. It also leased the building to the purchaser just as Thomas has leased the building from G.M. In an NLRB conducted election the International Association of Machinists have been certified as the joint bargaining agent for the hourly employees at White's retail operation. White terminated all of the employees and discontinued the operation. Of the fifteen the successor company, Alamo White Truck Service, Inc., [18] hired eight of the former White employees and completed its complement of shop employees by hiring five other employees from the outside. The situation and the facts are extremely similar, if not identical, to the facts in the instant case. Here was a company primarily engaged in the business of manufacturing vehicles which closed out its retail sales and service operation just as G.M. did when it, primarily a manufacturer of vehicles and other products, decided to close out its sales and service operation at Bixel, Wilshire and Vermont.

In the Alamo White Truck case the Court held that the purchasing company, Alamo White Truck Service, was not a successor employer and had no duty to recognize or bargain with the union. The Court found that the employee-employer relationship in the operation of Alamo was materially different from the employee-employer relationship of White Motor Company, not just because of the difference in the number of employees but because of the interaction of the employees group with the management of Alamo was completely changed, finding that the difference between a close per-

sonal relationship of management and workers characteristic of a small local business as distinguished from workers in a large corporation with some far off head office.

Just as in Alamo, Thomas is a small independent company where there is a close personal relationship of management and the employees as distinguished from the relationship with G.M. the world's largest corporation, and a group of employees at the Bixel address.

In *NLRB v. JOHN STEPP'S FRIENDLY FORD, INC.*, 338 F.2d 833, a case substantially on all fours with the instant case, and involving the purchase of certain assets of an automobile dealership, the Court held that the employer was not a successor employer but an independent employer. The facts in the Stepp's case disclose that, after an NLRB conducted election in which the seller's [19] salesmen elected to be represented by the union, the owner of the Ford dealership, because of bad health and personal problems decided to sell his business. Thereafter John Stepp entered into an agreement with the Ford dealer, Westward Motors, Inc., to purchase certain assets of Westward Motors. Stepp already had two other dealerships, a Chrysler dealership across the street from the Ford dealership and another Chrysler dealership in another town in Alaska. After being approved by Ford Motors Company and franchised as a Ford motor car dealer Stepp formed a corporation to take over the said Ford Franchise. In the succeeding week while the business remained closed for repainting and remodeling Stepp took applications for employment and interviewed most of the former sales people of Westward. Of the total personnel of Westward, Stepp employed twenty one of

thirty persons. In the sales department, which had voted to be represented by the union, Stepp after interview, employed three of the former twelve salesmen. Stepp had a sales department complement of eight, four of which he brought over from across the street and the eighth salesman was hired from the outside.

The Circuit Court of Appeals held that the controlling question was whether the new owner may rationally be said, in substance, to have taken over and succeeded to his predecessor's employees. If he had not then he is not, as to the employees in question, a successor. He is an original employer. The Court held that in the Stepp case it could not be rationally said that the company had taken over and succeeded to Westward's salesmen's unit. It is clear from the record that the salesmen were not employed because of their Westward connection but because Stepp thought they were the best he could get to fill out his sales force. Hence, Stepp was held not to be a successor employer.

It is respectfully submitted that the facts in the Thomas case are substantially identical to the facts in the Stepp [20] case. Thomas, too, interviewed some of the former employees of G.M. and attempted to procure the best employees that would fit into the type of operation that Thomas desired to conduct.

V

Conclusion

It is respectfully submitted that under the facts, the existing Board cases, the policy of the Board and the intent of Congress with respect to Federal Labor Laws and the decisions of the Courts warrant that the Complaint in the above entitled matter should be dismissed.

Accordingly, Motions heretofore made by Respondent, Thomas, to dismiss the Complaint are hereby renewed.

DATED this 24th day of June, 1966.

RESPECTFULLY SUBMITTED,

/s/ H. BURDETTE FREDRICKS
H. Burdette Fredricks
Attorney for Respondent
Thomas Cadillac, Inc. [21]

[Affidavit of Service by Mail Attached.] [22]

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STATUTES

- Section 8 (a) (1) and (3) of the Labor Management
Relations Act, as amended.
-

[Title of Board and Cause.]

EXCEPTIONS OF RESPONDENT LOU EHLERS
CADILLAC TO TRIAL EXAMINER'S DE-
CISION AND THE PROCEEDINGS

Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board (herein called the "Board" or the "NLRB"), Series 8, as amended, Respondent Lou Ehlers Cadillac (hereinafter called "Ehlers") submits this State of Exceptions to the Decision of the Trial Examiner and the Proceedings. References herein to the transcript of the record of the NLRB hearing will be simply by the page number without any other identification. References herein to Ehlers' brief, dated April 5, 1966 and filed with the Trial Examiner, will be preceded merely by the letters "BTE" and followed by the number of the page or pages being cited. Such brief will be incorporated by reference into the brief to be submitted to the Board hereinafter by Ehlers.

Respondent Ehlers hereby excepts to the following rulings, findings, conclusions, and recommendations by reference to the page and line of the Trial Examiner's Decision:

1. Page 2, lines 8-10. The order of the Regional Director in consolidating Ehlers' case with that of the Respondent Thomas Cadillac, Inc. (hereinafter called "Thomas") and issuing a consolidated complaint [G.C. Exh. 1Q] was unauthorized, contrary to law, and prejudicial. The same is true as to the ruling of the Trial Examiner [G.C. Exh. 1-Z] in denying Ehlers' motion to sever the cases [G.C. Exh. 1-U]. Ehlers excepts to all findings involving Thomas as being irrelevant, im-

material, and unrelated to Ehlers and outside the scope of the allegations of the complaint.

2. Page 2, lines 27-28. The Trial Examiner's Decision indicates convincingly that he did not consider Ehlers' brief.

3. Page 2, lines 50-51. The evidence does not establish that General Motors Corporation (hereinafter called "G.M.") operated any "agencies", so such finding is without support in the evidence and the finding is incomplete in not including the operation at 501 Vermont Avenue (hereinafter called "Vermont") as a part of the Los Angeles branch [255, 308-309].

4. Page 3, lines 6-8. This finding is contrary to the evidence and the law [BTE 12-56].

5. Page 3, lines 19-35. This finding involving Thomas is irrelevant and immaterial and outside of the allegations of the complaint so far as Respondent Ehlers is concerned. As noted in Exception 1, exception is taken on the same grounds as to all findings pertaining to Thomas without further identifying such findings by line and page, except the following findings which deal exclusively with Thomas: Page 6, lines 3-9, 42-49; page 7, line 10—page 9, line 24; page 15, lines 30-31; page 7, line 55—page 18, line 8.

6. Page 3, lines 51-54. This finding is without any evidentiary support.

7. Page 4, line 17. This finding is contrary to the evidence which establishes the date was October 21, 1958 [G.C. Exhs. 19-C, 19-D].

8. Page 4, lines 33-35. This finding is inaccurate. The agreement of December 1, 1964 was amended April 28, 1965 [G.C. Exhs. 6-C, 19, p. 56, 19-J].

9. Page 4, lines 36—page 5, line 13. To the extent these findings imply that there were in fact separate units for the Machinists and the Painters unions, the same is contrary to the evidence [450; G.C. Exhs. 6-A, 6-B, 19, pp. 10, 14-17, 21-29, 19-A, 19-B, 19-C, 19-D; BTE 59-60].

10. Page 5, lines 34-38. This finding is in conflict with the evidence. On January 12, 1965, G.M. had a meeting with the Unions concerning the discontinuance of retail sales and service operations in Los Angeles (not "agencies") and the handling (not "transfer") of retail operations by independent dealers [G.C. Exhs. 19, pp. 31-37, 39, 44-46, 55, 19-E].

11. Page 6, lines 34-37. To the extent that this finding infers that there was no greater interchange of employees, the same is contrary to the evidence [296, 434].

12. Page 6, line 39—page 7, line 2. To the extent this finding infers that there was separation of accounting for the two branches, the same is contrary to the evidence [319-320, 326].

13. Page 7, lines 2-4. This finding is contrary to the evidence [462-463, BTE 14-17]. The evidence established there was considerable integration of the operations of Wilshire, Bixel, and Vermont, and the same was tied in with Detroit direction and control [148-149, 250, 289, 291-299, 301-303, 306-308, 313-315, 319-320, 323, 327, 431-435, 453-454, 462-463; G.C. Exhs. 2, p. 25, 3, p. 35, 6-A, 6-B, 6-C, 19-C, 19-D, 19, pp. 3-4, 6, 10-12, 17-21, 24, 26-28, 46-55, 59-60, 69-72; Ehlers Exh. 15; BTE 14-17].

14. Page 7, line 6. This finding is contrary to the evidence [297-298, 314].

15. Page 9, lines 29-30. This finding is inaccurate. Lou Ehlers was told by G.M. that the union agreement would not be binding upon him [243; G.C. Exh. 2, p. 15].

16. Page 9, lines 38-40, to the extent it incorporates the finding at page 7, line 22—page 8, line 48. The finding is contrary to the evidence in the following respects: The issuance of a Cadillac Direct Dealer Selling Agreement was not committed (Page 7, lines 24-25) [G.C. Exh. 2-A, paragraphs First and Fourteenth]; the sublease, purchases, etc. were limited to the Wilshire premises and G.M.'s operations there [G.C. Exh. 2-A]; the Direct Dealer Selling Agreement was not consummated until on or after June 1, 1965 [73-76; G.C. Exh. 8].

17. Page 9, line 45. The finding that Ehlers commenced operations at any "branch" is without support in the record. Similar use of the word "branch" elsewhere in the Trial Examiner's Decision to refer to the Wilshire premises at which Ehlers conducted its business is hereby excepted to on the same ground.

18. Page 9, line 48. This finding is without support in the evidence.

19. Page 9, line 60. The finding is contrary to the evidence with reference to "foreman", in the singular. There were several foremen, including a body shop manager [G.C. Exh. 4].

20. Page 9, lines 62-63. This finding is inaccurate. The "work in process" that was "completed" by Ehlers was not G.M.'s work. All G.M.'s interest therein had been assigned to Ehlers (see page 8, lines 9-11), so it was Ehlers' work and it consisted of a minimum amount of work on three cars [459-460, 462].

21. Page 10, lines 2-4. This finding is contrary to the evidence [BTE 12-56].

22. Page 10, lines 30-34. This finding is contrary to the evidence, to law, and to the allegations of the complaint [See Exception 13; BTE 14-17]. The evidence established that the "employing industry" was G.M. or, if not, that it was G.M.'s Cadillac Motor Car Division. Even if it were considered to be the Los Angeles branch of the Cadillac Motor Car Division, such branch activity included the sale of used cars, not only at 1076 West Seventh Street (herein called "Bixel") and at 5151 Wilshire Boulevard (hereinafter called "Wilshire") but also at the Vermont location.

23. Page 10, lines 34-42. These findings are contrary to the evidence, to law, and the allegations of the complaint [BTE 12-56].

24. Page 10, line 42—page 11, line 2. This finding is contrary to the evidence. By the franchise G.M. merely assured the operation of a dealership by Ehlers compatible with G.M.'s directions and prior policies as applied to all other independent dealers [73-76, 167, 185-187, 189; G.C. Exh. 8; Ehlers Exh. 3].

25. Page 11, lines 2-5. These findings are contrary to the evidence, to law, and to the allegations of the complaint [BTE 12-56].

26. Page 11, lines 29-34. These findings are contrary to the evidence, to law, and to the allegations of the complaint [BTE 12-56, 64-81].

27. Page 12, line 6. The description of Ehlers as a "successor" to G.M. is contrary to the evidence and the law [BTE 12-56]. Exception is also taken to each

subsequent use of the term "successor" when referring to Ehlers, upon the same grounds.

28. Page 12, lines 7-10. This finding (?) is without support in the evidence.

29. Page 12, lines 10-18. These findings are without support in the evidence.

30. Page 12, lines 19-24. These findings (?) are without support in the evidence and are contrary to the policies of the Act expressed in Sections 7 and 9.

31. Page 14, lines 17-19. Such finding is without support in the evidence and is contrary to law [BTE 82-132], and the policies of the Act, is outside of the jurisdiction of the Board [BTE 132-135], and is unconstitutional as a disregarding of the doctrine of separation of powers, improper delegation of legislative powers, deprivation of Ehlers' property without due process of law, interference with Ehlers' right to engage in business and earn a living, and the freedom and sanctity of contracts under Sections 1 and 8 of Article 1 and the Fifth, Tenth, and the Fourteenth Amendments of the United States Constitution.

32. Page 14, line 36—page 14, line 12. Such findings (?) are without support in the evidence and are contrary to the policies of the Act.

33. Page 15, lines 13-17. This finding is contrary to all the evidence [G.C. Exhs. 2, pp. 74-76, 88, 109-116, 3, pp. 28-29, 16, ¶].

34. Page 16, lines 1-4. This finding is contrary to the evidence [156-158, 241-243, 332-337, 408-410, 479; G.C. Exhs. 2, pp. 31-32, 6-A through 6-M, 19, pp. 3-4, 6-18, 20-21, 24-28, 33, 59-60, 83-84, 95, 19-A, 19-B; Ehlers Exhs. 10 through 14; BTE 103-126].

35. Page 16, lines 6-8. This finding is contrary to law [BTE 56-81].

36. Page 16, lines 7-11. This finding is contrary to law [BTE 81-82], and with reference to Section 8(d) of the Act is outside the allegations of the complaint.

37. Page 16, lines 17-18. This finding is contrary to the evidence [G.C. Exhs. 6-A, 19-P; BTE 58-59].

38. Page 16, lines 20-27. These findings are contrary to the evidence and the law [82, 208-209, 211-212, 215-217, 322, 440-451, 454-456, 463, 511-512; G.C. Exhs. 2, p. 66, 2-A, 6-A, 19-A, 19-B, 19-C, 19-O, 19-P, 19-S, 19, pp. 10, 14-17, 21-29, 88, 20-B; BTE 56-64].

39. Page 16, lines 29-31. This finding is contrary to the evidence [316, 444-451, 456; G.C. Exhs. 2, pp. 60-67; 3, pp. 9-10, 15-16; Ehlers Exh. 16; and see Exceptions 13 and 38 above; BTE 12-18, 32-34, 55-56].

40. Page 16, lines 43-45. This finding is contrary to the evidence [G.C. Exhs. 6-G, 6-J, 19-A].

41. Page 17, lines 1-19. These findings were without any support in the evidence and are contrary to law.

42. Page 17, lines 21-25. This finding is without any support in the evidence, and is contrary to law.

43. Page 17, lines 28-32. This finding is without any support in the evidence and is contrary to law and to the allegations of the complaint.

44. Page 17, lines 34-37. This finding is contrary to the evidence and to law. See Exceptions 4 and 31.

45. Page 17, lines 40-42. This finding is contrary to law.

46. Page 17, lines 43-45. This finding is contrary to the evidence [71-72, 147, 205-206, 222-228, 234-235, 239-240, 476-477, 482; Ehlers Exhs. 17, 18, 20; G.C. Exhs. 4, 6-A, 17-A, 17-B, 17-C, 17-D, 19-C, 19-Q, 19-R, 19, p. 75; BTE 64-71, 77-81].

47. Page 17, lines 51-53. This finding is contrary to the evidence.. See Exception 46.

48. Page 18, lines 47-50. This finding is contrary to the evidence. See Exception 46.

49. Page 19, lines 1-10. This finding is contrary to the evidence. See Exception 33.

50. Page 19, lines 10-12. This finding is without any support in the evidence.

51. Page 19, lines 12-21. These findings are without any support in the evidence.

52. Page 19, lines 23-26. This finding is contrary to the evidence. See Exception 46.

53. Page 19, lines 33-36. This finding is contrary to the evidence and the allegations of the complaint [34, 149; G.C. Exh. 2-A; see contrary finding at page 3, line 7].

54. Page 19, lines 36-39. This finding is contrary to law.

55. Page 19, lines 39-40. This finding is contrary to the evidence. See Exception 46.

56. Page 19, lines 41-46. This finding is without any support in the evidence.

57. Page 19, lines 48-52. This finding is contrary to law and the policies and provisions of the Act.

58. Page 19, lines 53-55. This finding is contrary to the evidence. See Exception 46.

59. Page 20, lines 1-6. These findings are contrary to the evidence and to law. See Exception 46.

60. Page 20, lines 11-16. This finding is without support in the evidence and is contrary to law.

61. Page 20, lines 20-55. The proposed remedy is improper and invalid for all the reasons hereinafter stated with reference to the recommended order (page 22, line 1—page 23).

62. Page 21, lines 9-37. These conclusions are contrary to the evidence and the law and are outside the allegations of the complaint, and particularly with reference to the determination of a multi-employer unit. See Exception 38.

63. Page 21, lines 39-44. These conclusions are contrary to the evidence and the law. See Exceptions 35 and 36.

64. Page 21, lines 46-52. These conclusions are contrary to the evidence and the law and, with reference to Section 8(d), are outside the allegations of the complaint. See Exceptions 31, 35, and 36.

65. Page 21, lines 54-56. These conclusions are contrary to law.

66. Page 22, line 1—page 23 (Recommended Order). The recommended order is improper and invalid as being beyond the power, authority, and jurisdiction of the Board, as not being based on the evidence or valid conclusions of law, as being contrary to the policies and provisions of the Act, as being punitive and inequitable and imposing an undue and unfair burden on Respondent, and it would not effectuate the policies of the Act.

WHEREFORE, Respondent Ehlers urges the Board to accept and adopt each of the Exceptions herein and act accordingly by dismissing this proceeding.

DATED: June 17, 1966.

Respectfully submitted,

LATHAM & WATKINS

By R. W. Lund

R. W. Lund

615 South Flower Street

Los Angeles, California 90017

Attorneys for Respondent

Lou Ehlers Cadillac

[Title of Board and Cause.]

MOTION OF RESPONDENT EHLERS FOR JUDICIAL NOTICE TO BE TAKEN OF COURT PROCEEDING (AND FOR ALTERNATIVE RELIEF)

1. Respondent Lou Ehlers Cadillac (hereinafter called "Ehlers") hereby moves that in case Nos. 31-CA-83-3 and 85-2 (1) the Board take judicial notice of the facts hereinafter stated (in Paragraph 2) concerning a related judicial proceeding, or (2) in the alternative, the Board reopen the record herein and receive as evidence the statement in Paragraph 2 below concerning said facts, or (3) in the alternative, the Board reopen the hearing for the purpose of permitting Respondent to offer evidence of said facts.

2. The facts concerning said related judicial proceeding are as follows:

a. On June 28, 1965, the Charging Parties (International Association of Machinists, District Lodge 94, AFL-CIO, Local Lodge 1186, AFL-CIO, by Herbert A. Cooksey and International Brotherhood of Painters, Decorators and Paperhangers of America, Local 1798, AFL-CIO by John Lazarra), hereinafter called the "Petitioners", commenced an action under Section 301(a) of the Labor Management Relations Act, 1947 [29 U.S.C.A. § 185(a)] against Respondent Lou Ehlers Cadillac, hereinafter called "Ehlers", to compel it to arbitrate under the December 1, 1964 collective bargaining agreement [General Counsel's Exhibits 6-A through 6-M] between the Petitioners and the Cadillac Motor Car Division of General Motors Corporation, hereinafter called "G.M.". Said action was commenced by the filing of a Petition to Compel Arbitration in the Superior Court of the State of California for the County of Los Angeles, being Case No. 863284. A copy of said Petition (excluding the exhibits) is attached hereto as Exhibit "A" and incorporated herein by this reference. The exhibits attached to said Petition included certain documents which are a part of the record herein as General Counsel's Exhibits 6-A, 6-B, 7-A, 7-B, 7-D, 7-E, and 7-F.

b. On or about July 16, 1965, Ehlers served and filed an Answer to said Petition. A copy of such Answer is attached hereto as Exhibit "B" and incorporated herein by this reference. Therein, as alleged in Paragraph XII, Ehlers admitted

the allegations of the Petition (Par. XII) that G.M. and Ehlers were each engaged in a business affecting interstate commerce within the meaning of Section 301 of the Labor Management Relations Act.

c. Under date of January 12, 1966, Petitioners served and filed a Notice of Motion to Compel Arbitration, a copy of which is a part of the record herein as Ehlers' Exhibit 19.

d. On or about February 15, 1966, G.M. was granted an order of summary judgment each of the Petitioners and was dismissed from the case.

e. Pursuant to Petitioners' Notice (Par. c. above), on May 13, 1966 a hearing was held on the Petition and Petitioners' Motion in Department 14 of the Superior Court for Los Angeles County before the Honorable Sidney W. Kaufman, Judge presiding. Said hearing was held on the basis of the entire record and file in said action, including the pleadings, the written and oral stipulations of the parties, the affidavits and declarations submitted by the parties (including the affidavits of A. M. Long [Ehlers' Exhibit 16] and of George Harland [Ehlers' Exhibit 20]), the depositions of Lou Ehlers [General Counsel's Exhibit 2], Erving Graham [General Counsel's Exhibit 3], J. G. Pais [General Counsel's Exhibit 19], Herbert A. Cooksey, John Lazzara [compare Ehlers' Exhibit 13], Paul French [compare Ehlers' Exhibit 14], and Bernard Hubert [compare Ehlers' Exhibit 14], and Bernard Hubert [compare Ehlers' Exhibit 15] and the documents attached as exhibits to such depositions, and the memoranda of points and authori-

ties filed by the parties. Following oral argument by counsel for Petitioners and for Ehlers, the Court orally announced its decision that the Petition to Compel Arbitration would be denied.

f. On the basis of the Trial Examiner's Decision herein, on or about May 24, 1966, Petitioners served and filed a Notice of Motion for Reconsideration, and attached thereto a copy of the May 17, 1966 Decision herein of Trial Examiner Lowell Goerlich.

g. Said Motion for Reconsideration was argued orally by counsel for Petitioners and for Ehlers on June 24, 1966 before Judge Kaufman, who on said date denied the same.

h. On June 30, 1966, Judge Kaufman signed and filed his Findings of Fact and Conclusions of Law, a copy of which is attached hereto as Exhibit "C" and incorporated herein by this reference.

i. On June 30, 1966, Judge Kaufman signed and filed his Order Dismissing Petition to Compel Arbitration, a copy of which is attached hereto as Exhibit "D" and incorporated herein by this reference.

j. On July 1, 1966, Ehlers served upon the Petitioners, and each of them, a written notice of the entry of such judgment and order of June 30, 1966.

k. No Appeal from said order and judgment of June 30, 1966 has been filed and said order and judgment has now become final. Rule 2, Calif. Rules of Court, Rules on Appeal, 50 Cal.2d 1, 63 Cal.2d 1].

3. The facts which Respondents seeks to put before the Board cannot be disputed. They are all a matter of public record. Further, the same counsel who represented the Charging Parties herein represented the same parties as Petitioners in said judicial proceeding.

4. Under the circumstances it would appear that the Board may take judicial notice of all the facts here sought to be presented. National Labor Relations Act [29 U.S.C.A. § 160(b)], Sect. 10(b); Federal Rules of Civil Procedure [28 U.S.C.A.], Rule 43(a); Administrative Procedure Act [5 U.S.C. § 1006(d)], Sect. 7(d); Calif. Code Civ. Proc. Sect. 1875(3); *Flores v. Arroyo*, 56 Cal.2d 492, 496, 364 P.2d 263 (1961); *People v. Rojas*, 57 Cal.2d 676, 679, 371 P.2d 300 (1962); *Escobedo v. Travelers Ins. Co.*, 197 Cal.App. 2d 118, 121, 17 Cal.Rep. 219 (1961); cf. *Salinas Valley Broadcasting Corp. v. NLRB*, 334 F.2d 604 (2d Cir. 1964); *Paramount Cap Mfg. Co. v. NLRB*, 260 F.2d 109 (8th Cir. 1938).

5. If, however, the Board concludes that it should not take judicial notice, it is submitted that the Board should receive the statement of facts into the record as additional evidence. The Board, in that event, may deem it advisable merely to issue an order to the other parties to show cause why such facts should not be incorporated into the record. This procedure is much preferable to reopening of the record and scheduling a further hearing for the purpose of receiving the incontrovertible evidence of such facts, in order that unnecessary delay might be avoided. (In this connection, although all parties had consented thereto, the Board denied Ehlers' request for an extension of time to June 27, 1966 for filing its Exceptions to the Trial

Examiner's Decision of May 17, 1966, which was 25 pages in length).

6. As a last alternative, the Board should permit the reopening of the record and schedule a hearing for the purpose of allowing Respondent to present evidence of such facts. In this connection, Ehlers could not have presented such evidence at the original hearing herein because the court decision had not then been rendered and it had just become final.

7. The relevancy and materiality of these additional facts are obvious. In this connection, the Notice of Motion (see Paragraph 2 c above) was received in evidence at the hearing as Ehlers' Exhibit 19. In the state proceeding, in an action commenced by the Charging Parties, it has been judicially determined that Ehlers was not and is not a successor to General Motors Corporation or any of its operations and that the collective bargaining agreement between the Charging Parties and G.M. is not, and was not at any time, binding on Ehlers. Under the principles of *res adjudicata* this determination is now binding and conclusive on the parties, and no other forum may make a contrary determination.

8. Since it has been conclusively determined that Ehlers is not a successor to G.M. and was never bound by G.M.'s union agreement, the Board may not make a finding to the contrary. The Charging Parties elected to pursue the state court proceeding. The determination therein was made under federal labor policy, including that of the N.L.R.A., pursuant to Section 301(a) of the Labor Management Relations Act. There is no public policy under the N.L.R.A., as amended by the same Labor Management Relations Act, which would war-

rant any determination by the Board which is contrary to that made in the Section 301(a) proceeding. Accordingly, the Board may not properly adopt the proposed findings of the Trial Examiner that Ehlers was a successor to G.M. or that Ehlers was bound by G.M.'s union contract.

9. Therefore, the Board is urged to take judicial notice of the facts stated in Paragraph 2 above unless one of the other parties files with the Board, not later than September 15, 1966, Objections to this motion and the Board is satisfied such Objections are valid.

10. Alternatively, if the Board concludes that it cannot take judicial notice of such facts, the Board is urged to immediately issue an order to the other parties to show cause why it should not reopen the record herein in case Nos. 31-CA-83-3 and 85-2 for the purpose of accepting said statement as evidence.

11. As a final alternative, if the Board denies both of the above motions, it should issue an order reopening the hearing in case Nos. 31-CA-83-3 and 85-2 for the purpose of permitting Respondent Ehlers to offer evidence of the facts stated above.

DATED: September 2, 1966.

Respectfully submitted,

LATHAM & WATKINS

/s/ By R. W. LUND

R. W. Lund

615 South Flower Street

Los Angeles, California 90017

Attorneys for Respondent

Lou Ehlers Cadillac

EXHIBIT "A"

In the Superior Court of the State of California
for the County of Los Angeles

No. 863284

In the Matter of the Petition of HERBERT A
COOKSEY, individually and in a representative
capacity for and on behalf of INTERNATIONAL
ASSOCIATION OF MACHINISTS, DIS-
TRICT LODGE 94, AFL-CIO, LOCAL LODGE
1186, AFL-CIO, and JOHN LAZZARA, individ-
ually and in a representative capacity for and on
behalf of INTERNATIONAL BROTHER-
HOOD OF PAINTERS, DECORATORS AND
PAPERHANGERS OF AMERICA, LOCAL
1798, AFL-CIO,

Petitioners.

vs.

CADILLAC MOTOR CAR DIVISION OF GEN-
ERAL MOTORS CORP., LOU EHLERS, DOE
CORPORATIONS I TO XX, DOE ASSOCIA-
TIONS I TO XX, DOES I TO XX, Inclusive.

Respondents.

To: The Honorable Superior Court of the State of
California, for the County of Los Angeles.

PETITION TO COMPEL ARBITRATION AND
FOR TEMPORARY INJUNCTIVE RELIEF

I.

The Petition of HERBERT A. COOKSEY, for
and on behalf of INTERNATIONAL ASSOCIA-
TION OF MACHINISTS, DISTRICT LODGE 94,
LOCAL LODGE 1186, and JOHN LAZZARA, for

and on behalf of INTERNATIONAL BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, LOCAL 1798, AFL-CIO, and its officers and members, respectfully shows that:

1. International Association of Machinists, District Lodge 94, Local Lodge 1186, AFL-CIO, was and now is a voluntary unincorporated association comprised of members employed throughout Los Angeles County, and said Union exists for the purpose of improving wages, hours of work and working conditions, and to negotiate and execute collective bargaining agreements on behalf of its members. International Brotherhood of Painters, Decorators and Paperhangers of America, Local No. 1798, AFL-CIO, is likewise an unincorporated association, a labor organization, comprised of members employed throughout Los Angeles County, and exists primarily for the purpose of improving the wages and other conditions of employment on behalf of its actual or potential members, and to aid and assist its members in their dealings with employers. Both of said organizations will hereinafter be referred to as "Petitioner Unions".

Herbert A. Cooksey is and at all times pertinent has been a member and the duly elected business manager of International Association of Machinists, District Lodge 94. John Lazzara at all times pertinent has been a member and a business representative of District Council No. 36, International Brotherhood of Painters, Decorators and Paperhangers of America, and assigned to Local Union 1798.

II

Respondent, Cadillac Motor Car Division of General Motors Corp., hereinafter referred to as "Respondent Cadillac", has for approximately 28 years owned and operated the automotive agency located at 5151 Wilshire Blvd., in which new and used Cadillacs are sold and serviced. Immediately prior to May 28, 1965, said agency employed approximately 35 employees working at machinists and painters classifications, and many of such said employees had worked at said agency in excess of 20 years. Said Respondent Cadillac has been signatory to collective bargaining agreements with the Painters and Machinists unions for approximately 6 years.

III

On August 1, 1957, following a secret ballot election conducted by the National Labor Relations Board, in Case Nos. 21-RC-4864 and 21-RC-5414, the Petitioners, Machinists and Painters Unions, were certified as exclusive bargaining agents on behalf of the employees of Respondent Cadillac employed at the 5151 Wilshire Boulevard branch.

IV

Following the certification, Respondent Cadillac executed a collective bargaining agreement with representatives of both unions effective December 1, 1964, and remaining in effect until December 1, 1967. Said contract contains comprehensive provisions guaranteeing certain minimum wage standards, employee representation through shop stewards and committees, union security and dues check-off, grievance and arbitration, no-strike clause, protection against arbitrary discharge or

discipline, seniority, transfers, leaves of absence, sick leave, premium pay, overtime pay, holiday pay, vacation pay, group medical insurance and pension.

Article I, Section 1 of said agreement provides *inter alia* that:

"The company hereby recognized the union . . . as exclusive representative of certain employees . . . in the company's service station located at . . . 5151 Wilshire Blvd. . . . for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment, subject to and in accordance with the provisions of the National Labor Relations Board."

Article I, Section 2 provides that:

"The purpose of the agreement is to provide orderly collective bargaining relations between the company and the union, to secure a prompt and fair disposition of grievances, to eliminate interruptions of work and interferences with the efficient operation of the company's business."

Article I, Section 5 provides *inter alia*:

"The right to hire, promote, discharge or discipline for cause . . . is the sole responsibility of the company, except that union members shall not be discriminated against as such." (Emphasis added)

Article IV of the contract entitled "Grievance Procedure" provides in Section 1 as follows:

"Should differences arise between the company and the employees, there shall be no suspension of work, but an earnest effort shall be made to settle such differences immediately in the following manner: . . ." (Emphasis added)

In Article IV, Section 6, it is provided *inter alia* as follows:

"It shall be the function of the umpire, after due investigation . . . to make the decision in all claims of discrimination for union activity or membership, and in all cases of alleged violation of the terms of this agreement . . . in regard to recognition, representation, grievance procedure, seniority, disciplinary layoff and discharge, working hours . . ." (Emphasis added).

Petitioner unions and the employees, third party beneficiaries thereof, at all times faithfully observed and adhered to the terms of the labor agreement and rendered loyal, conscientious and faithful service to said Cadillac agency. A true copy of the contract is attached hereto as Petitioner's Exhibit A.

V

Respondent, Lou Ehlers, Doe Corporations I to XX, Doe Associations I to XX and Does I to XX, inclusive, hereinafter referred to as "Respondent Ehlers" is and at all times pertinent has been a resident of the County of Los Angeles, State of California.

VI

On a date prior to June 1, 1965, Respondent Cadillac and Ehlers entered into an agreement, by the terms of which the management and control of said Cadillac agency located at 5151 Wilshire Boulevard passed from Cadillac to Ehlers. Such agreement was unaccompanied by any notice from said Respondents to Petitioner Unions. Approximately three weeks prior to June 1, 1965, Petitioner Unions received information indirectly that Respondent Cadillac was transferring the management

and control of said agency and attempted to contact Mr. J. G. Pais, Assistant Personnel Director of Cadillac Motor Car Division, for the purpose of arranging a meeting between Respondents and Petitioner Unions in order that the rights of the employees following the transfer of management and control be clarified. Such attempt was unsuccessful, and a few days prior to June 1, 1965, said J. G. Pais advised counsel for the Petitioner Unions that the Wilshire Division was being sold to Respondent, Lou Ehlers, and that any further dealings with the agency must of necessity be through him.

VII

On May 19, 1965, legal counsel for Petitioner, Machinists and Painters jointly communicated with Respondent Ehlers in writing requesting a meeting in order "to clarify the rights of the employees and above unions, and to deal with any questions that may arise on the part of all parties concerned . . .". A true copy of said written communication is attached hereto as Petitioner's Exhibit B.

VIII

Shortly after this communication, counsel for Petitioner unions were contacted by legal counsel for Respondent Ehlers and advised in substance that said Respondent would not recognize the existing labor agreement, that the Respondent had not decided how many of the employees would be retained after June 1, 1965, and that a meeting with Petitioner representatives would not be held until such time as their majority status among the employees was demonstrated after all hiring had been completed.

IX

On May 28, 1965, the employees at the Wilshire branch were all terminated arbitrarily and without cause; were advised that business would resume on June 1, 1965, and that phone calls would be made to such of the personnel that were needed. Approximately 10 employees out of the total of 35 were recalled to work subsequently.

X

On June 3, 1965, counsel for Petitioner, Machinists Union, communicated with legal counsel for Respondent Ehlers, and in effect requested that the company submit to arbitration the question as to whether and the extent to which the existing labor agreement was binding upon it. A true copy of said letter is attached hereto as Petitioner's Exhibit C, and by reference made a part hereof.

On June 7, 1965, counsel for Respondent, Ehlers, in writing advised Petitioner counsel that the company declined to proceed to arbitration.

On June 8, 1965, the previous request was extended to include the Petitioner, Painters Union. A true copy of this letter is attached hereto as Petitioner's Exhibit D, and by reference made a part hereof.

On June 8, 1965, the Petitioner Union communicated with Respondent Cadillac and invited that company to participate in the arbitration between Petitioners and Respondent Ehlers. A true copy of this letter is attached hereto as Petitioner's Exhibit E, and by reference made a part hereof. To date, Respondent Cadillac had not responded to this communication.

On June 14, 1965, Respondent Ehlers in writing declined to arbitrate, as to Petitioner, Painters Union, also. A true copy of this letter is attached hereto and by reference made a part hereof as Petitioner's Exhibit F.

XI

A dispute has arisen between Petitioner unions and Respondents, Ehlers and Cadillac, as to the interpretation of said collective bargaining agreement, as follows:

A. Petitioners contend that Respondent, Ehlers, is a successor to Respondent Cadillac; that there exists a continuity of management, a continuity of employment and a continuity of the business engaged in by Respondent Ehlers from the management, employment and business engaged in by Respondent Cadillac; that by reason of the aforesaid, Respondent Ehlers is bound by the written contract entered into by Respondent Cadillac; that specifically to the same extent as though it were expressly included as a signatory thereto.

B. The Respondents contend that Respondent Ehlers is a separate corporate entity, distinct from the management and control of Respondent Cadillac and that therefore, the said collective bargaining agreement does not apply.

XII

The said Cadillac agency has for years sold new and used Cadillac automobiles retail in an amount far exceeding \$500,000.00 annually, and has purchased automotive parts and accessories directly from points outside of California in an amount far exceeding \$50,000.00 annually. Furthermore, the National Labor Relations Board did in 1957 conduct an election amongst the employees of said agency in Case No. 21-RC-4864

and 5414. Said Respondents Cadillac and Ehlers, therefore, are engaged in interstate commerce within the meaning of Section 301 of Title III of the Labor Management Relations Act, 61 Stat 156, 29 USC 185.

XIII

The injury which Petitioner unions are suffering and will continue to suffer is irreparable in nature, since the damages sustained are not completely ascertainable in money damages. The discharge of over 90% of the employees in the bargaining unit causes great and immediate injury to them, demoralizes and breaks down the bargaining unit, and causes strife and disharmony within the union.

XIV

Respondent Ehlers will continue to refuse to reinstate the great majority of the employees, who were employed as of May 28, 1965 unless ordered by this court. The facts as alleged justify the issuance of a preliminary injunction and a temporary restraining order pending the return on the Order to Show Cause. The injury that will be suffered by the union and the employees if injunctive relief pending the arbitration hearing is not granted, is far greater than that which will accrue to the Respondents if relief is granted. In this regard, the financial burden upon the employees and their dependents, if immediate relief is not granted, is so great as to make likely financial ruin, loss of homes, and entail considerable hardship to many of the employees and their families involved.

WHEREFORE, Petitioners pray:

1. That an order of this court be made directing that the Respondent Ehlers and Cadillac arbitrate the following dispute with the Petitioner Machinists and Painters Union as follows:

a. Where the applicability of the collective bargaining agreement executed by the Petitioner Unions and Respondent Cadillac effective December 1, 1964, to the Wilshire Boulevard agency since June 1, 1965 is an arbitrable issue under said contract as to Respondent Cadillac, Ehlers, or both.

b. If the answer to (a) is yes, then, did the Respondent Ehlers breach the collective bargaining agreement by the termination of employees on May 28, 1965.

c. Did Respondent Cadillac breach the collective bargaining agreement by permitting the termination of employees on May 28, 1965 to occur.

d. If the answers to (a), (b), (c), or any of them is yes, then what is the appropriate remedy?

2. That Respondents, Cadillac and Ehlers, and each of them, their agents, confederates and employees, attorneys, and all persons acting in concert or participation with them, be ordered pending the decision of the arbitrator:

a. To reinstate upon request, all employees who were terminated on May 28, 1965 to the same or substantially equivalent positions held by them prior to said date and grant to them full seniority rights.

b. To pay to such employees referred to in (a) above, such sums of money necessary to compensate for all monies lost as result of the terminations.

3. That upon the hearing of the Order to Show Cause, a Preliminary Injunction be granted ordering the Respondents, and each of them, to do the acts set forth in Section 2(a) and (b) above.

4. That a Temporary Restraining Order pending a hearing on the Order to Show Cause be granted to Petitioners ordering the Respondents to do the acts required in 2(a) and (b) above.

5. For Petitioner's costs of suit in this action, and for such other and further relief as the Court may deem proper.

DATED: June 23, 1965

RICHMAN, GARRETT & ANSELL

By Herbert M. Ansell

Attorneys for Petitioners,

International Association of

Machinists, District Lodge 94,

Local Lodge 1186, AFL-CIO

LEVY, DE ROY, GEFFNER,

KOSZDIN & GLOW

Be Leo Geffner

Attorneys for Petitioners,

Brotherhood of Painters, Decorators

and Paperhangers of America,

Local 1798, AFL-CIO

[Title of Superior Court and Cause.]

EXHIBIT "B"

ANSWER OF RESPONDENT
LOU EHLERS CADILLAC

In answer to the petition herein, respondent Lou Ehlers Cadillac, a corporation, sued herein as Doe Corporation I and hereinafter called "Ehlers", admits, denies, and alleges, as follows:

I

In answer to Paragraph I, admits the allegation that Herbert A. Cooksey is and at all times pertinent has been a member and the duly elected business manager of International Association of Machinists, District Lodge No. 94; denies each and every other allegation in said Paragraph.

II

In answer to Paragraph II, admits that the General Motors Corporation (hereinafter referred to as "G. M.") has for approximately 10 years owned and operated the automotive agency located at 5151 Wilshire Blvd., in which new and used Cadillacs were sold and serviced; alleges on information and belief that immediately prior to May 28, 1965, G. M. employed at such agency approximately 42 employees working in machinists and painters classifications, and that G.M. has been signatory to collective bargaining agreements with the Painters and Machinists Unions for approximately six years; denies each and every other allegation in said Paragraph.

III

In answer to Paragraph III, denies each and every allegation therein.

IV

In answer to Paragraph IV, admits that G.M. executed a collective bargaining agreement with both unions which, by its terms, was to be effective from December 1, 1964 until December 1, 1967; denies each and every other allegation in said Paragraph; alleges upon information and belief that said agreement of December 1, 1964 was mutually extinguished and terminated as of May 29, 1965.

V

In answer to Paragraph V, admits that Respondent Ehlers is a California corporation, incorporated on May 19, 1965; denies each and every other allegation in said Paragraph.

VI

In answer to Paragraph VI, admits that on or about May 12, 1965 Lou Ehlers entered into an agreement with G.M. to purchase certain of the assets owned and used by G. M. in the operation of its agency at 5151 Wilshire Boulevard and to sublet the premises from G. M., which agreement was to be effective June 1, 1965 but was contingent upon G. M. issuing to Lou Ehlers or his assignee a franchise to sell Cadillacs, that by such agreement Lou Ehlers did not assume the obligations of G. M. or its labor contracts nor did Lou Ehlers agree to hire any of G. M.'s employees, that on June 1, 1965 Lou Ehlers assigned such agreement to Respondent Ehlers, that the sale and sublease provided for in such agreement were made on June 7, 1965, that on the same date Ehlers was issued a franchise by G. M. to sell Cadillacs, that on June 1, 1965 Respondent Ehlers began the actual sale and service of Cadillacs

at 5151 Wilshire Boulevard; alleges upon information and belief that representatives of G. M. and the Petitioner Unions had communications and meetings and negotiations over a period of several months preceding June 1, 1965 concerning G. M.'s contemplated closing of its 5151 Wilshire branch and that G. M. and the Petitioner Unions reached an accord upon the extinguishment of the rights of the employees of G. M. and the union agreements as of May 28, 1965; denies each and every other allegation in said Paragraph.

VII.

In answer to Paragraph VII, admits that Respondent Ehlers on May 22, 1965 received the letter, a copy of which is attached as Exhibit "B" to the Petition; denies each and every other allegation in said Paragraph.

VIII

In answer to Paragraph VIII, admits that there was an oral conversation between counsel for Petitioner Machinists Union and Respondent Ehlers' counsel on May 20, 1965 in which Respondent Ehlers' counsel stated that Respondent Ehlers would not recognize the existing labor agreement as binding on it, and that Respondent Ehlers had not decided how many, if any, of the G. M. employees at G. M.'s 5151 Wilshire Boulevard branch would be hired by it; denies each and every other allegation in said Paragraph.

IX

In answer to Paragraph IX, admits that the employees of G. M. at its 5151 Wilshire branch were terminated by G.M. on May 28, 1965 that Respondent Ehlers on that date hired about 11 of such shop employees

to begin work for Ehlers on June 1, 1965, and that on the same date the G. M. employees were advised that Respondent Ehlers would call any of them that it intended to hire and who had not already been hired; denies each and every other allegation in said Paragraph; alleges that Respondent Ehlers hired 21 other workmen, who were not employees of G. M. at its 5151 Wilshire branch, to make its full complement of 32 shop employees.

X

In answer to Paragraph X, admits that on June 4, 1965 Respondent Ehlers' counsel received the letter attached as Exhibit "C" to the Petition, that on June 7, 1965 Respondent Ehlers' counsel advised Petitioners' counsel by letter that Ehlers declined his request for arbitration, that on June 14, 1965 Respondent Ehlers' counsel received the letter attached as Exhibit "D" to the Petition, and that on the same date Respondent Ehlers' counsel wrote to Petitioners Painters' counsel the letter attached as Exhibit "F" to the Petition; denies each and every other allegation in said Paragraph.

XI

In answer to Paragraph XI, admits that Respondent Ehlers contends that it is a separate corporate entity. distinct from the management and control of Respondent G. M., and that for such reason and numerous others any collective bargaining agreement of G. M. does not apply to it; denies each and every other allegation in said Paragraph.

XII

In answer to Paragraph XII. admits that Respondents Cadillac and Ehlers are each engaged in a business

affecting interstate commerce within the meaning of Section 301 of the Labor Management Relations Act; denies each and every other allegation in said Paragraph.

XIII

In answer to Paragraph XIII, denies each and every allegation therein.

XIV

In answer to Paragraph XIV, admits that Ehlers has no present intention of hiring any more of the employees of G. M. who were working at its 5151 Wilshire Boulevard branch in May of 1965; denies each and every other allegation in said Paragraph.

AS A SECOND, SEPARATE, AND DISTINCT DEFENSE, Respondent Ehlers alleges as follows:

I

The petition herein fails to allege a cause of action upon which any relief can be granted.

AS A THIRD, SEPARATE, AND DISTINCT DEFENSE, Respondent Ehlers alleges as follows:

I

The subject matter of the instant petition involves questions of unfair labor practices and representation which are within the exclusive jurisdiction of the National Labor Relations Board under the National Labor Relations Act [29 U.S.C., § 151]. The petitioning Unions have in fact filed unfair labor practice charges against Ehlers with the National Labor Relations Board. Therefore, this action is preempted by the exclusive jurisdiction of the National Labor Relations Board and this court has no jurisdiction over the subject of this action.

AS A FOURTH, SEPARATE, AND DISTINCT DEFENSE, Respondent Ehlers alleges as follows:

I

Respondent Ehlers has not at any time been a party to any collective bargaining agreement between G. M. and the petitioning unions, nor has Respondent Ehlers at any time assumed or agreed to be bound by any such contract. Under such circumstances, any holding that Respondent Ehlers is bound by any part of any such contract would be unconstitutional as a disregarding of the doctrine of separation of powers, improper delegation of legislative powers, deprivation of Respondent Ehlers' property without due process of law, interference with Respondent Ehlers' right to engage in business and earn a living and the freedom and sanctity of contracts, in violation of Sections 1 and 8 of Article 1, and the Fifth and the Fourteenth Amendments of the United States Constitution.

WHEREFORE, Respondent Ehlers prays that Petitioners take nothing by their petition herein, that the same be dismissed, and that Respondent recover its costs herein.

DATED: July 16, 1965.

LATHAM & WATKINS
By RICHARD W. LUND
Richard W. Lund
Attorneys for Respondent
Lou Ehlers Cadillac

EXHIBIT "C"

Superior Court of the State of California
for the County of Los Angeles

No. 863284

In the Matter of the Petition of HERBERT A. COOKSEY, individually and in a representative capacity for and on behalf of INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT LODGE 94, AFL-CIO, LOCAL LODGE 1186, AFL-CIO and JOHN LAZZARA, individually and in a representative capacity for and on behalf of INTERNATIONAL BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, LOCAL 1798, AFL-CIO,

Petitioners,

vs.

LOU EHLERS CADILLAC, a Corporation, sued
herein as Doe Corporation I,

Respondent.

LOU EHLERS CADILLAC, a Corporation,

Respondent and
Cross-Complainant,

vs.

INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT LODGE NO. 94, an
unincorporated association; et al.

Cross-Defendants.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

The above entitled matter came on regularly for hearing on May 13, 1966, in Department 14 of the above entitled Court, the Honorable Sidney W. Kaufman, Judge presiding. Petitioners appeared by their attorneys, Richman, Garrett & Ansell by Herbert M. Ansell, Esquire, and Respondent Lou Ehlers Cadillac appeared by its attorneys Latham & Watkins by Richard W. Lund, Esquire. The Court, having considered all the evidence, having studied the memoranda of legal authorities submitted by counsel, and having heard oral arguments of counsel and being fully advised in the premises, makes the following

FINDINGS OF FACT

I

International Association of Machinists, District Lodge 94, Local Lodge 1186, AFL-CIO, is, and at all times material herein was, a voluntary unincorporated association and labor union comprised of members employed throughout Los Angeles County, State of California, and is hereinafter referred to as "Local 1186". Petitioner Herbert A. Cooksey is, and at all times material herein was, a member and duly elected business manager of International Association of Machinists, District Lodge No. 94. Petitioner Herbert A. Cooksey filed and prosecutes this action in a representative capacity for and on behalf of Local 1186.

II

International Brotherhood of Painters, Decorators and Paperhangers of America, Local 1798, AFL-CIO,

is, and at all times material herein was, a voluntary unincorporated association and labor union comprised of members employed throughout Los Angeles County, State of California, and is hereinafter referred to as "Local 1798". Local 1186 and Local 1798 are hereinafter jointly referred to as "the Unions". Petitioner John Lazzara is now, and at all times material herein was, a member and a business representative of District Council No. 36, International Brotherhood of Painters, Decorators and Paperhangers of America, and assigned to Local 1798. Petitioner John Lazzara filed and prosecutes this action in a representative capacity for and on behalf of Local 1798.

III

Respondent Lou Ehlers Cadillac is, and at all times since May 19, 1965, has been, a California corporation authorized to engage in business in Los Angeles County, State of California.

IV

General Motors Corporation, hereinafter referred to herein as "G.M.", is, and at all times material herein was, a corporation incorporated under the laws of the State of Delaware and engaged in business in the County of Los Angeles, State of California, and elsewhere. G.M. is, and at all times material herein was, the world's largest corporation engaged primarily in the manufacture of automobiles, including the Cadillac.

V

For a number of years prior to May 28, 1965, G.M. operated a Los Angeles branch at 1076 West Seventh Street (hereinafter referred to as "Bixel"), 5151 Wilshire Boulevard (hereinafter referred to as

"Wilshire"), and 501 South Vermont Avenue, all in the City of Los Angeles, State of California, in the retail sale of new Cadillacs, the retail sale of used cars taken in in trade on the sale of such Cadillacs, and the servicing of Cadillacs. For a number of years prior to May 28, 1965, the Unions maintained collective bargaining agreements with G.M. relative to certain service shop employees of G.M. employed in its two service shops at Bixel and Wilshire.

VI

On December 1, 1964, G.M. and the Unions entered into a written collective bargaining agreement, hereinafter referred to as "the Agreement", covering such shop service employees of G.M. employed in its Bixel and Wilshire shops. Said Agreement, by its terms, was to be effective to December 1, 1967. Said Agreement provided for referral to arbitration of disputes between the parties thereto with reference to alleged violations of certain specific and identified provisions of the Agreement.

VII

As of the close of business on May 28, 1965, G.M. discontinued the operation of its Los Angeles branch and ceased the business of the sale and service of Cadillacs in Los Angeles. Prior to such date, G.M. advised all of its employees at its Los Angeles branch that they were terminated as of the close of business on May 28, 1965, and pursuant to such notice such employees were so terminated as of May 28, 1965. It is not true that such employees were terminated arbitrarily or without cause, or that Respondent had nothing to do with the termination of such employees by G.M.

VIII

Effective June 1, 1965, Respondent purchased from G.M. some of the assets, and sublet from G.M. the premises, theretofore used by G.M. in its operation at the Wilshire location of its Los Angeles branch. Respondent's purchases from G.M. did not include any of G.M.'s permits, licenses, trade-marks, trade names, patents, non-trade accounts receivables, vendors, contracts, customer lists, or goodwill. Respondent did not assume any of the obligations of G.M. under the Agreement, or otherwise, nor did Respondent agree to hire any of the employees of G.M.

IX

Effective June 1, 1965, Respondent was granted a franchise from G.M. to sell new Cadillac automobiles as an independent dealer, and beginning that date Respondent commenced its sole business, at the Wilshire location, of the resale at retail of new Cadillacs, the leasing of new Cadillacs, the sale of used cars, and the servicing of Cadillacs. For the operation of its business, Respondent found it necessary to promptly renovate the Wilshire premises and acquire, from sources other than G.M., substantial quantities of tools, equipment, furniture, furnishings, and supplies, and it did so. Respondent hired, from several sources, its own managers, supervisors, and employees on the basis of those believed by it to be best qualified to perform most satisfactorily the work required in its business, and it established its own wages, salaries, hours, and all other terms and conditions of employment. The nature and place of Respondent's business, its methods of operation, and its managers, supervisors, and employees were all substantially different from those of G.M. in

G.M.'s operation of G.M.'s Los Angeles branch and particularly G.M.'s Wilshire location. Respondent was not at any time and is not now a successor to G.M., or to its Los Angeles branch, or to its Wilshire location or operation.

X

Respondent did not at any time adopt, accept, assume, or agree to be bound by the Agreement, or any part thereof, but at all times expressly denied that the Agreement, or the arbitration clause therein, or any part thereof was binding on it. Said Agreement, the arbitration clause therein, or any part thereof was not at any time, and is not now, effective as to, or binding upon, Respondent.

XI

The Unions requested of Respondent that it recognize the Agreement as being binding upon it, but Respondent advised the Unions that it would not do so and that it did not consider itself bound by the Agreement. Subsequent to June 1, 1965, the Unions requested of Respondent that it agree to submit to arbitration the question posed by the Unions as to whether the Agreement was binding on it, but Respondent advised the Unions that it would not agree to arbitration. The instant petition to compel arbitration was then filed on June 28, 1965.

XII

All allegations and matters set forth in the Petitioners' petition to compel arbitration which are contrary to or inconsistent with the above Findings of Fact are found to be untrue.

Based upon the foregoing Findings of Fact, the Court makes the following

CONCLUSIONS OF LAW

I

Respondent is not now, and at no time has it been, a successor to G.M., or to G.M.'s Los Angeles branch, or to G.M.'s Wilshire location.

II

Respondent is not now, nor was it at any time, a party to the Agreement nor did it at any time assume, adopt, accept, or agree to the Agreement, or breach the same, and Respondent is not now, nor was it ever, bound by the Agreement, the arbitration clause therein, or any provision thereof or obligated thereunder to arbitrate or observe any of its terms or provisions.

III

No agreement between Respondent and the Unions, or either of them, to arbitrate any controversy now exists or has at any time existed.

IV

Every finding of fact deemed to be a conclusion of law is hereby determined to be, and is incorporated herein as, a conclusion of law.

V

The petition to compel arbitration is without merit and must be denied and the proceeding dismissed, without prejudice to the prosecution by Respondent of its cross-complaint, and with costs allowed to Respondent.

An appropriate order, in accordance herewith, shall be entered.

DATED: June 30, 1966.

/s/ SIDNEY W. KAUFMAN
Judge of the Superior Court

[Title of Superior Court and Cause.]

ORDER DISMISSING PETITION TO COMPEL
ARBITRATION

The petition herein of Petitioners to compel arbitration came on regularly to be heard, pursuant to Petitioners' notice of motion, on May 13, 1966 before the Honorable Sidney W. Kaufman, Judge presiding in Department 14 of the above-entitled Court, Richman, Garrett & Ansell, by Herbert M. Ansell, Esquire, appearing for Petitioners and Latham & Watkins, by Richard W. Lund, Esquire, appearing for Respondent Lou Ehlers Cadillac, and it appearing to the satisfaction of the Court that Respondent was not and is not a party to, or bound by, any agreement with Petitioners, or either of them, or with International Association of Machinists, District Lodge 94, Local Lodge 1186, AFL-CIO and International Brotherhood of Painters, Decorators and Paperhangers of America, Local 1798, AFL-CIO, or either of such labor unions, and that no agreement to arbitrate any controversy exists between Respondent and Petitioners, or either of them, or between Respondent, and International Association of Machinists, District Lodge 94, Local Lodge 1186, AFL-CIO and International Brotherhood of Painters, Decorators and Paperhangers of America, Local 1798, AFL-CIO, or either of such labor unions, and that the petition, therefore, should be denied and dismissed;

IT IS HEREBY ORDERED, in accordance with the findings of fact and conclusions of law heretofore found by me and filed concurrently herewith, that the petition herein to compel arbitration is denied and the proceeding dismissed, without prejudice to the prosecu-

tion by Respondent of its cross-complaint, Respondent to recover its costs and disbursements herein incurred in the sum of \$.....

DATED: June 30, 1966.

/s/ SIDNEY W. KAUFMAN
Judge of the Superior Court

[Title of Board and Cause.]

ANSWER TO MOTION OF RESPONDENT
EHLERS FOR JUDICIAL NOTICE TO BE
TAKEN OF COURT PROCEEDING (AND
FOR ALTERNATIVE RELIEF)

ANSWERING THE ALLEGATIONS CON-
TAINED IN SAID MOTION, CHARGING PAR-
TIES ADMIT, DENY AND ALLEGE AS FOL-
LOWS:

1. Charging Parties move that the request contained in Paragraph 1 therein be denied in its entirety.

2. Answering Paragraph 2 (a) through (k), Charging Parties admit the truth of said allegations. Charging Parties however further allege with respect to 2 (k) that the sole reason for which an appeal from the order and judgment of June 30, 1966 has not been taken is because Parties did on July 11, 1966 execute a settlement agreement, a true copy of which is attached hereto as Charging Parties' Exhibit "1." By the terms of said agreement, both Parties clearly maintained their respective legal positions and Respondent Ehlers dismissed his cross complaint against Charging Parties while the Charging Parties waived a right of appeal, each Party

to bear its own costs. Furthermore, the stated primary objective of all counsel to execute such agreement was to minimize the heavy costs already incurred by the respective clients and anticipated costs in the future, and to make it possible for all Parties to concentrate on the proceeding before the NLRB.

3. Answering Paragraph 4, Charging Parties assert that under the above circumstances it is not proper for the Board to take judicial notice of the fact of the Superior Court findings. Likewise, it is not proper, as contended in Paragraph 5, that the Respondent's statement of facts be admitted into the record as additional evidence, nor is it proper to reopen the record as additional evidence, nor is it proper to reopen the record and schedule a hearing for the purpose of allowing Respondent Ehlers to present evidence of the facts alleged.

4. Such facts as alleged are irrelevant and immaterial. It is well settled that an action brought under Section 301 of the Labor Management Relations Act, 51 Stat. 156, 29 U.S.C. 185, vests a state court with jurisdiction to apply Federal law, independently of any unfair labor practice proceedings which have arisen from the same factual background. *Smith v. Evening News Association*, 371 U.S. 195; *Carey v. Westinghouse Electric Corp.*, 374 U.S. 761. In short, the Federal Act envisions that independent proceedings in a case such as this, for example, may occur at the National Labor Relations Board and also a state or federal court of com-

petent jurisdiction. Whereas there may be some uncertainty as to the extent to which a Board decision might be binding upon a state court judge being faced with an identical issue, clearly a state court's finding is not binding upon the Board. Especially is this true in the instant case where the entire proceedings before the state court were based on depositions, portions of the NLRB transcript of record, and some affidavits which were part of the Board record. At no time was the state court compelled to evaluate testimony before it and make credibility findings. The record is virtually uncontradicted in all material respects. Trial Examiner Lowell Goerlich and Superior Court Judge Sidney Kaufman construed the identical record substantially different.

5. It is noted that in the companion case in the state court entitled "Petition of Herbert A. Cooksey, etc., et al. v. Thomas Cadillac, Inc., etc.," Case No. 863286, the Parties to the present have not executed a settlement agreement and consequently Charging Parties have presently on file an appeal from the decision of Honorable Sidney Kaufman denying the motion to compel arbitration.

6. Finally, Charging Parties wish to place before the Board two very recent decisions on the issue of successorship. Westchester Corp., 62 LRRM 2726, and Papermill Workers v. Fibre Co., 62 LRRM 2772 (U. S. Dist. Ct.). Both decisions uphold successorship as between separate corporate entities and discuss this entire question in detailed fashion.

7. By reason of the above, Charging Parties respectfully request that Respondent Ehlers' motion be denied in its entirety.

DATED: October 3, 1966

Respectfully submitted,

RICHMAN, GARRETT & ANSELL

/s/ By HERBERT M. ANSELL

Herbert M. Ansell

1336 Wilshire Boulevard

Los Angeles, California 90017

Attorneys for the Charging Parties

EXHIBIT "1"

AGREEMENT

HERBERT A. COOKSEY, individually and in a representative capacity for and on behalf of INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT LODGE 94, AFL-CIO, LOCAL LODGE 1186, AFL-CIO and JOHN LAZZARA, individually and in a representative capacity for and on behalf of INTERNATIONAL BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, LOCAL 1798, AFL-CIO, hereinafter called the "Unions" and THOMAS CADILLAC, INC., hereinafter called the "Company", mutually agree as follows:

1. Notwithstanding their continued belief that the decision therein was erroneous, the Unions and each of them hereby waive any right to appeal from the order of June 30, 1966 denying their petition and motion to

compel arbitration in Los Angeles Superior Court Case No. 863284 or from any ruling, order, or judgment in such proceeding. The obligations of the Unions hereunder are in consideration of the Company's obligations and release under Paragraph 2.

2. Notwithstanding its continued belief in the merits of the same, the Company agrees to promptly dismiss with prejudice its cross-complaint for damages for defamation and for an injunction in Los Angeles Superior Court Case No. 863284 against each and every one of the cross-defendants named therein [and hereby releases each and every one of such cross-defendants of and from any liability arising out of any of the matters alleged in such cross-complaint. The obligations of the Company and the release given hereby are in consideration of the Unions' obligations under Paragraph 1 hereof].

3. It is further agreed that costs of suit incurred in Case #863284 with respect to the Petition to Compel Arbitration and Cross-Complaint for Libel be borne by the parties incurring such costs. Each party waives any claim for costs against the other.

DATED: July 11, 1966.

Counsel

Approved:

RICHMAN, GARRETT & ANSELL

/s/ By HERBERT M. ANSELL

HERBERT M. ANSELL

Approved:

LEVY, DeROY, GEFFNER, KOSZDIN & GLOW

/s/ By ABE F. LEVY

ABE F. LEVY

Approved:

LATHAM & WATKINS

/s/ By RICHARD W. LUND

RICHARD W. LUND

Parties

HERBERT A. COOKSEY

INTERNATIONAL ASSOCIATION
OF MACHINISTS, DISTRICT LODGE
94, AFL-CIO

LOCAL LODGE 1186, AFL-CIO

/s/ By HERBERT A. COOKSEY

HERBERT A. COOKSEY

JOHN LAZZARA

INTERNATIONAL BROTHER-
HOOD OF PAINTERS, DECORA-
TORS AND PAPERHANGERS OF
AMERICA, LOCAL 1798, AFL-CIO

/s/ JOHN J. LAZZARA

JOHN LAZZARA

LOU EHLERS CADILLAC

By LOUIS W. EHLERS

LOUIS W. EHLERS

President

THOMAS CADILLAC

/s/ By LA RUE THOMAS

LA RUE THOMAS

[Affidavit of Service by Mail Attached.]

REPORTER'S TRANSCRIPT

Before the National Labor Relations Board
Thirty-First Region

Case No. 31-CA-83-2

In the Matter of:

THOMAS CADILLAC, Inc.,

and

Respondent,

AUTOMOTIVE, MARINE, PRODUCTION FIN-
ISHERS, EQUIPMENT MAINTENANCE
AND PUBLIC SERVICE PAINTERS, LO-
CAL UNION 1798, BROTHERHOOD OF
PAINTERS, DECORATORS AND PAPER
HANGERS OF AMERICA, AFL-CIO,

Charging Party.

Case No. 31-CA-83-3

LOU EHLERS CADILLAC,

and

Respondent,

AUTOMOTIVE, MARINE, PRODUCTION FIN-
ISHERS, EQUIPMENT MAINTENANCE
AND PUBLIC SERVICE PAINTERS, LO-
CAL UNION 1798, BROTHERHOOD OF
PAINTERS, DECORATORS AND PAPER
HANGERS OF AMERICA, AFL-CIO,

Charging Party.

Case No. 31-CA-84-3

THOMAS CADILLAC, INC.,

and

Respondent,

INTERNATIONAL ASSOCIATION OF MA-
CHINISTS, DISTRICT LODGE 94, AFL-
CIO,

Charging Party. [1]*

*Page number appearing at top of page of Original Transcript
of Record.

136 *International Assn. of Machinists, etc. vs.*

Case No. 31-CA-85-2

LOU EHLERS CADILLAC,

Respondent,

and

INTERNATIONAL ASSOCIATION OF MA-
CHINISTS, DISTRICT LODGE 94, AFL-
CIO,

Charging Party.

Hearing Room 2, Federal Building, 312 North Spring
Street, Los Angeles, California, Wednesday, February
23, 1966.

The above-entitled matter came on for hearing, pur-
suant to notice, at 10:00 o'clock a.m.

Before: Lowell Goerlich, Trial Examiner.

Appearances: George A. Pappy, Esq. 312 North
Spring Street, Los Angeles, California, appearing on
behalf of the Counsel for the General Counsel.

Latham & Watkins, By: Richard W. Lund, Esq. 615
South Flower Street, Los Angeles, California 90017,
appearing on behalf of Respondent Lou Ehlers Cadillac.

Fredericks & Keslar, By: H. Burdette Fredricks,
Esq. Suite 1014 Travelers Building, 3600 Wilshire
Boulevard, Los Angeles, California 90005, appearing
on behalf of Respondent Thomas Cadillac.

Richman, Garrett & Ansell, By: Herbert M. Ansell.
Esq. 1325 Wilshire Boulevard, Los Angeles, California
90017 appearing on behalf of the Charging Party [2]

PROCEEDINGS

* * * * *

Trial Examiner: General Motors sold each portion of the multiplant unit to separate purchasers, and you claim that these purchasers became successors, I suppose, because they put to work some of the employees that worked for General Motors, and that the units are split units of the multiplant unit continued as before.

Mr. Pappy: Yes, sir.

Well, units. We would split them into four units, two Painter units and two IAM units. [20]

* * * * *

Trial Examiner: Is there any claim on the parties that the appropriate unit should be the unit of both Thomas and Ehlers? [21]

* * * * *

Trial Examiner: I take it that neither Thomas nor Ehlers takes the position that it ought to be composed of both Thomas and Ehlers?

Mr. Fredricks: Absolutely not, as far as Respondent Thomas is concerned.

Mr. Lund: The same as far as we are concerned. [23]

* * * * *

Trial Examiner: It sounds like the unit question is a paramount question—is the paramount question in this case. [24]

* * * * *

Trial Examiner: That is right. I have to find that the multiplant unit is now applicable to a multi-Employer unit.

As I understand it under the Board's recent decisions in the multi-Employer unit, the multi-Employer can withdraw at an appropriate time.

I would assume the resistance which the Respondents are [27] showing to this incorporated into a multi-Employer unit would be tantamount to the same thing as withdrawing therefrom. They did it the first time they could, and that is when they came into existence.

Mr. Pappy: Our position, of course, would be that the body by force of the events, the former appropriate unit, should be divided in half, particularly since the—

Trial Examiner: Do you think a multi-Employer unit can be imposed upon a couple of Employers, just because they bought the establishments from their predecessor piecemeal?

Mr. Pappy: I do not take that position. I take the position the appropriate unit is not a multi-Employer unit, but a single Employer, two single Employer units, in each case. [28]

* * * * *

Mr. Pappy: I propose we stipulate that Lou Ehlers Cadillac commenced operations on June 1, 1965.

Trial Examiner: Very well.

Hearing no objection, such stipulation is accepted into evidence. [34]

* * * * *

Mr. Pappy: I wouldn't go so far as to say that. I would go so far as to say where there is a successorship to the bargaining obligation, the Employer also is a successor to the obligation under the collective bargaining agreement.

I realize, Mr. Examiner, there is a law contrary to this on the Board's books, but we believe in view of the Wiley versus Livingston the Board is now warranted in making this obligation upon the Employer. [51]

* * * * *

Mr. Lund: I have no objection, except I want to include a stipulation that I talked to Mr. Pappy about.

That is the letter of May 19, 1965 was misdirected and was received on May 22. That is General Counsel's Exhibit 7(a).

That the letter of June 8 to Mr. Geffner, which is 7(d), was misdirected and was received on June 14.

With that understanding, we have no objection.

Mr. Pappy: I will so stipulate.

Mr. Ansell: So stipulate. [72]

* * * * *

Trial Examiner: I take it there is no question about the statute of limitations in this matter.

Mr. Pappy: Section 10(b)?

Trial Examiner: Yes.

Mr. Pappy: No.

Mr. Lund: That is one of the reasons, Mr. Examiner, we never filed for an election. The first thing we knew there was a charge before we were charged with observing the contract or anything else.

I don't want to surprise anybody. Our position is these letters did not demand recognition. At no time did the Unions as far as we are concerned ever claim they represented a majority of the unit.

All they did in the past by these letters show they arbitrated.

Trial Examiner: Let's go off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Mr. Pappy: I would like to have this document marked for identification.

(The document above referred to was marked General Counsel's Exhibit No. 8 for identification.)

Mr. Pappy: The document which has been marked as General Counsel's Exhibit 8 I would like to offer in evidence with the stipulation that Mr. Fredricks is about to state. [73]

* * * * *

Mr. Fredricks: I would be willing to stipulate on behalf of Respondent Thomas Cadillac, Inc. that Exhibit 8, consisting at the present time of three documents, which I understand are going to be incorporated into one document, and one is entitled "Direct Dealer Selling Agreement," and the second one is entitled "Supplement to Direct Dealer Selling Agreement," and the third is entitled "General Motors Corporation Direct Dealer Selling Agreement," which incorporates the terms and conditions of the selling agreement is the franchise issued by the Cadillac Motor Car Division of General Motors Corporation to Thomas Cadillac, Inc., and that this franchise is the typical franchise or dealer selling agreement that is issued to independent Cadillac dealers throughout the United States by the Cadillac Motor Car Division of General Motors Corporation.

Mr. Pappy: And the date entered into is June 1st.

Mr. Fredericks: So far as Respondent Thomas Cadillac, Inc., the franchise or dealer selling agreement was entered into between Thomas Cadillac, Inc. and

General Motors Corporation, Cadillac Motor Car Division on June 1, 1965.

Trial Examiner: Is there any objection to the stipulation?

Mr. Ansell: The Charging Party joins in the stipulation.

Mr. Pappy: I join in the stipulation.

Mr. Lund: That has no bearing on us. [74]

Trial Examiner: That is understood.

Hearing no objection, the stipulation is accepted into evidence, and Exhibit 8 is admitted into evidence, that is, General Counsel's Exhibit 8.

(The document above referred to, heretofore marked General Counsel's Exhibit No. 8, was received in evidence.)

Mr. Pappy: I would like to propose a stipulation that is identical to the terms of those stated by Mr. Fredricks, except that the name Lou Ehlers Cadillac be substituted in those cases where Mr. Fredricks had Thomas Cadillac, Inc.

Mr. Lund: Stipulated, with the one additional fact that is one of those documents has a blank space for the inserting of the geographic area.

We want to include in the stipulation the geographical area extends out to what is the greater metropolitan Los Angeles area, including most of Los Angeles County and most of Orange County.

Trial Examiner: Is that agreeable?

Mr. Pappy: I would so stipulate.

Mr. Fredricks: So stipulate.

I further stipulate the area referred to in the industry is the so-called zone of influence area and a nonexclusive area so far as the sale of Cadillac Motor Cars is concerned.

Mr. Pappy: Is it my understanding your zones are [75] co-extensive?

Mr. Lund: They are co-extensive with maybe 10 other Cadillac dealers in the Los Angeles area.

Mr. Pappy: So stipulated.

Mr. Lund: We will accept those comments that Mr. Fredricks made with reference to ourselves.

Trial Examiner: There being no objection, the stipulation is admitted into evidence.

Mr. Pappy: There is a housekeeping matter.

I would like to withdraw General Counsel's Exhibit 8 and 6 in its entirety in order to make copies thereof.

Trial Examiner: Any objection?

Hearing no objection, that may be done.

Mr. Pappy: Would you mark this as General Counsel's Exhibit 9.

(The document above referred to was marked

General Counsel's Exhibit No. 9 for identification.)

Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Mr. Pappy: A one-page document has been marked as General Counsel's Exhibit 9 for identification on the stationery of Cadillac Motor Car Division of General Motors Corporation, reportedly signed by Joseph G. Pais, Assistant Personnel Manager of General Motors, Cadillac Motor Car Division, dated [76] February 18, 1966.

The document purports to be a list of General Motors supervisors in their two Cadillac locations in Los Angeles. It has a list of names, title, and location at which employed during May, 1965.

Mr. Fredricks: Any particular date during May?

Mr. Pappy: The document states, "An examination of our records reflects the following information as of May 31, 1965."

It is a list of supervisory employees of the Cadillac Motor Car Division of the Los Angeles branch.

Mr. Fredricks: I think we discussed this paper earlier with respect to the date. We should agree that should be May 28. May 31st in 1965 was on a Monday, and Cadillac terminated all its employees effective May 28, 1965, but I think they paid them through the month. That may be the reason for that date. May the 28th was the last work day.

Mr. Pappy: So stipulated.

Mr. Ansell: So stipulated.

Mr. Pappy: I would like to offer General Counsel's Exhibit 9 for identification as what it purports to be, and with the stipulation it is an accurate statement of the supervisory personnel of General Motors as the date is indicated, or rather as it was stipulated, subject to Respondent Ehlers and Respondent Thomas checking with knowledgeable persons who would know whether it is accurate or not. [77]

Mr. Lund: We don't have a copy, and also you misstated it.

I think it is supervisory personnel of the shop, they call it.

Mr. Pappy: Yes.

Mr. Lund: Service supervising personnel.

Do you have a copy?

Mr. Pappy: Yes.

Mr. Lund: I can check it real quickly.

As far as I am concerned, it is inaccurate.

Mr. Pappy: Inaccurate?

Mr. Lund: As far as the Wilshire location is concerned, it does include the parts manager.

Trial Examiner: Let's go off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Mr. Pappy: I would like to clarify General Counsel's Exhibit 9 to indicate that it only purports to list the supervisory personnel of General Motors at its two locations, former locations in Los Angeles, Cadillac locations, with respect to the supervisors of only those employees who were included in the unit alleged to have been appropriate when General Motors was in the picture, according to the Complaint of this case.

Trial Examiner: That unit was covered by the General Motors contract? [78]

Mr. Pappy: Yes, sir. These are supervisors of employees.

Trial Examiner: Is there any objection to General Counsel's Exhibit 9?

Mr. Lund: No objection, subject to the comment I made.

You used the language the contract does not define the actual unit.

Trial Examiner: I understand your claim was that there were a couple of extra classifications.

Mr. Lund: One at least of a substantial number of employees.

Trial Examiner: Very well.

Mr. Pappy: Would it be the supervisor of any of those employees?

Mr. Lund: Same supervisor.

Trial Examiner: Very well.

Exhibit 9 is accepted in evidence.

Mr. Fredricks: Subject to our checking.

Trial Examiner: Together with the stipulation that was made in connection thereto.

(The document above referred to, heretofore marked General Counsel's Exhibit No. 9, was received in evidence.) [79]

* * * * *

You will note, Mr. Examiner, that misstates May 31. However, we stipulate General Motors terminated its employees on the 28th of May, 1965.

Trial Examiner: Is there a difference between the unit described in the contract and the one described in the complaint?

Mr. Pappy: There is not.

Trial Examiner: Very well.

Mr. Lund: That is not an accurate answer to the Trial Examiner's question. The contract includes "garage attendants." It excludes pickup and delivery men, who were the men who would go out and pick up the cars from customers and bring them to the shop and return the cars to the customers.

They were in the bargaining unit notwithstanding the specific exclusion of pickup men, but they were in the bargaining unit, and they were called "garage attendants."

That is an accurate statement, isn't it?

Mr. Ansell: That is an accurate statement.

Mr. Pappy: I will stipulate to that.

Trial Examiner: The stipulation is accepted.

Mr. Pappy: Then I offer General Counsel's Exhibit 10 as being the list of General Motors employees covered by the bargaining units at the General Motors location on Wilshire.

Trial Examiner: Wilshire? [82]

* * * * *

Mr. Lund: The last one was May 18th?

Mr. Pappy: May 18th.

As General Counsel's Exhibit 12(d) for identification a one-page letter from Herbert Ansell and Leo Geffner to Mr. LaRue Thomas, dated June 8, 1965.

Finally, as General Counsel's Exhibit 12(d) for identification, a one-page letter from Leo Geffner to Mr. LaRue Thomas, Cadillac Motor Cars, dated June 9, 1965.

(The document above referred to was marked General Counsel's Exhibit No. 12(d) for identification.)

Mr. Pappy: Mr. Examiner, these documents I offer in evidence as the exchange of correspondence from the union to the companies respecting their demand for recognition and bargaining and for honoring of the contract, and that they were actually received by the addressees.

Trial Examiner: Is there any objection to the receipt of General Counsel's Exhibit 12?

Mr. Fredricks: On the basis offered, I would be willing to stipulate with counsel for the General Counsel that the respective letter, General Counsel's 12(a), dated May 17, was mailed by Mr. Geffner to Cecil L. Thomas and Sons, Inc., and [88]

* * * * *

Mr. Pappy: I know of no distinction between a successorship case, where the successorship occurs within the certification year, and that which occurs after the certification year, other than the requirement in the latter case that the General Counsel must prove by the pre-

ponderance of the evidence that the presumption of continued majority exists.

* * * * *

Trial Examiner: Does this contract have a compulsory checkoff?

Mr. Pappy: A compulsory checkoff and Union shop clause.

Trial Examiner: My recollection is the Board doesn't accept that as a proof of membership. [104]

* * * * *

Mr. Fredricks: I think we can go further, and I think we can enter into a stipulation we did not purchase any real property from General Motors Corporation that was used by General Motors Corporation, Cadillac Motor Car Division, in the operation of the Bixel Branch.

We did not purchase any good will from General Motors Corporation. We did not purchase any customer lists or any trade secrets that the General Motors Corporation had. [116]

What we did purchase were the designated assets that are set out in the buy and sell agreement and in the bill of sale, and I would so stipulate.

Mr. Pappy: The stipulation is agreeable to me, I believe.

Mr. Lund: We didn't.

I don't think you did either.

Mr. Pappy: There is some mention of it in his deposition.

Mr. Lund: It is not in there. It had nothing to do with the purchase of sale.

Mr. Pappy: Just given.

(Discussion off the record.)

Mr. Fredricks: On the record.

I would be further willing to stipulate we purchased no interest in any contracts that the General Motors Corporation had, nor an assignment of any contracts with respect to suppliers or services rendered General Motors.

I would be further willing to stipulate we purchased no interest General Motors had in any pension plan for the employees or any guaranteed income plan for any other group insurance plan, nor any other benefits that the Cadillac Motor Car Division had with respect to these employees.

Mr. Lund: I had an affidavit on this I was going to propose. [117]

Mr. Pappy: Mr. Examiner, I am not willing to stipulate. It is not because I doubt Mr. Fredricks' word or anything of that nature, but I think we would be willing, if there is nothing in these agreements covering what Mr. Fredricks said, I would like to have an agreement in evidence to show what was purchased, and I believe somewhere in there there are some exclusions.

Are there not things not purchased?

Mr. Lund: I think basically there are.

Trial Examiner: I assume when you apply the doctrine of successorship, there would be an argument made one way or the other as to whether there is enough from General Motors purchased to constitute a successorship by law. That is the reason why I'm interested in this question.

If the parties are all in agreement that these exhibits show enough to bring the Respondents under the successorship theory, there is no point in belaboring it any further.

Mr. Pappy: I therefore offer General Counsel's 14-(a) through 14(d) in evidence and call for a stipulation that they are what they purport to be.

Trial Examiner: What is your purpose in offering the exhibits, Mr. Pappy?

Mr. Pappy: My purpose is to show that certain assets were purchased by these documents and the franchise agreement and the attachments to it, which are the attachments to [118] Exhibit A, show that there was a buy and sell agreement covering certain assets. There was a lease, and I think a sublease besides.

I will not stipulate Respondent Thomas did not purchase the real property upon which General Motors conducted its business. It did lease and sublease respectively certain portions thereof from the true owners, who was not General Motors.

Trial Examiner: What is the purpose of your offer?

Mr. Pappy: To show the sale, the extent of the sale.

Trial Examiner: What do you expect to prove?

Mr. Pappy: That in substantial part I expect to prove specifically Paragraph B of my Complaint. I should say Paragraph 5(B) of my Complaint, and also the legal conclusion contained in Paragraph C of the Complaint.

I would like to add to my proposed stipulation and see if we did or did not have a stipulation with respect to the assets not purchased. In addition to the things I enumerated, [119] they did not purchase any deposits from the General Motors Corporation, any bank accounts or funds in any bank accounts, any reserves, contract reserves, or any rebates that are due and payable at the end of a model run year.

I would offer that along with the other proposed stipulation of things we did not purchase.

Trial Examiner: Are you agreeable to the stipulation of Counsel for the Respondent?

Mr. Pappy: Mr. Ansell is checking.

May we go off the record for just a minute?

Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

As I understand, you will stipulate that the things which Mr. Fredricks enumerated, which were not purchased from General Motors, do not appear in the exhibits, and you will in that case stipulate that they are facts. Is that right?

Mr. Pappy: Absolutely, indeed.

Trial Examiner: Very well.

I will accept that stipulation and admit General Counsel's Exhibits 14(a), 14(b), 14(c), and 14(d) into evidence.

(The documents above referred to, heretofore marked General Counsel's Exhibit Nos. 14(a), 14(b), 14(c), and 14(d), were received in evidence.)

[120]

Mr. Lund: At the same time, may we have the same stipulation for Lou Ehlers?

Trial Examiner: Very well.

Mr. Lund: May we have that stipulation?

Mr. Pappy: Yes, you may have that stipulation for Mr. Ehlers.

Mr. Ansell: The Charging Party joins in the stipulation.

Trial Examiner: The stipulation is accepted. [121]

* * * * *

We don't expect the Trial Examiner to rule on that, but the mere fact that a question was allowed to be answered without objection, and this would be true of all the depositions that may be offered and may be received, the parties don't admit by their silence it was material or relevant.

Mr. Ansell: I am willing to so stipulate.

Mr. Pappy: I so stipulate.

Trial Examiner: General Counsel's Exhibit No. 19 is admitted into evidence.

(The document above referred to, heretofore marked General Counsel's Exhibit No. 19, was received in evidence.)

Trial Examiner: I don't think you have offered 15, 16, or 17.

(The documents above referred to were marked General Counsel's Exhibit Nos. 15, 16, and 17 for identification.)

Mr. Pappy: No, I have not.

I have had marked as General Counsel's 20(a) the [127] certification by the National Labor Relations Board of the Painters' Union in a unit involving General Motors, Cadillac, former Cadillac locations in Los Angeles, California, involved herein.

(The document above referred to was marked General Counsel's Exhibit No. 20(a) for identification.)

Mr. Pappy: I have had marked as 20(b) the stipulation for certification upon consent election, which was signed by the parties in this same election case. It is 21-RC-4514.

(The document above referred to was marked General Counsel's Exhibit No. 20(b) for identification.)

Mr. Pappy: Pursuant to the stipulation that these documents are what they purport to be, I offer General Counsel's Exhibit 20(a) and 20(b) for identification into evidence.

Mr. Lund: We have no objection.

Mr. Fredricks: I have no objection.

Hearing Officer: Hearing no objection, General Counsel's Exhibit Nos. 20(a) and 20(b) are admitted into evidence.

(The documents above referred to, heretofore marked General Counsel's Exhibit Nos. 20(a) and 20(b), were received in evidence.)

Trial Examiner: Is this your proof to show Thomas is a successor to General Motors?

Mr. Pappy: Partly. A simple purchase of assets is not sufficient. This is part of the case.

Trial Examiner: Is there any objection to General Counsel's Exhibits 14(a), (b), (c), and (d)?

Mr. Fredricks: I have no objection.

Mr. Pappy: May we go off the record, Mr. Examiner?

Trial Examiner: Off the record.

(Discussion off the record.) [128]

Trial Examiner: On the record.

What about Exhibits 15, 16, 17, and 18?

(The document above referred to was marked General Counsel's Exhibit No. 18 for identification.)

Mr. Pappy: I will get to those. Mr. Examiner, in due course.

Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Mr. Pappy: I would like to propose the following stipulation, Mr. Examiner:

That all the employees listed on General Counsel's Exhibits 10 and 11, who have opposite their names the classification painter, were in the unit represented by the Painters' Union up until May 28, 1965, when General Motors ceased operations.

Trial Examiner: No other employees on the exhibit were in that unit?

Mr. Pappy: Yes. That no other employees on the exhibit were in that unit.

Trial Examiner: Is that stipulation agreeable?

Mr. Lund: I have to make a qualification. I didn't mention this when we were off the record.

We do not concede there are two separate units there. You will notice the contract is the contract with two Unions. [129] They negotiate together. They have one grievance procedure.

Trial Examiner: With that reservation, will you so agree?

Mr. Lund: Yes.

Mr. Fredricks: With the further reservation if those employees were terminated, they were terminated by General Motors Corporation.

Mr. Pappy: I believe we have a stipulation to that already.

Mr. Fredricks: We had some conversation on it.

Mr. Lund: I think we have a stipulation.

Mr. Pappy: If we haven't, I will stipulate to it now.

Mr. Fredricks: I will so stipulate.

Trial Examiner: Is it agreeable to the Charging Party?

Mr. Ansell: Yes.

Trial Examiner: The stipulation is accepted.

Mr. Pappy: I propose the following stipulation,
Mr. Examiner:

That all employees listed on General Counsel's Exhibits 10 and 11, who bear the classification Painter, were members or were paid-up members of the Painters' Union during the month of May, 1965, except for employee Rosteing, R-o-s-t-e-i-n-g.

Mr. Lund: I propose that all other employees who appear on General Counsel's Exhibits 10 and 11 were during [130] the month of May, 1965, members in good standing of the Machinists Union, the IAM in this case, except for employee Arnie Anderson, who appears on the last page of General Counsel's Exhibit 10, and except for John Hamuza, H-a-m-u-z-a, elevator operator, who appears on page 3 of General Counsel's Exhibit 11, and Alfred Daniels, who appears on page 4 of General Counsel's 11.

Trial Examiner: All right.

Are you indicating that the records of the two Unions involved show that at the time of the acquisition the assets of General Motors of these employees had paid their dues for that particular month or period just before?

Mr. Ansell: Yes.

Trial Examiner: Is that what you mean?

Mr. Pappy: Yes.

Trial Examiner: Many Unions carry a member in good standing for many months after they have failed to pay their dues or after they have left the Union.

Mr. Pappy: Paid their dues.

Mr. Lund: This is by payroll deduction for the month of May.

Is that not correct, Mr. Pappy?

Mr. Pappy: Yes.

Trial Examiner: Were the dues paid by payroll deduction?

Mr. Pappy: They check off in effect. [131]

Trial Examiner: Were all of the people in a check-off that you are speaking about?

Mr. Pappy: No.

Trial Examiner: Very well.

Mr. Ansell: They all paid dues.

Mr. Pappy: All paid dues either by checkoff or individual payment.

Trial Examiner: Is that stipulation agreeable to the respondents?

Mr. Lund: I want to make an observation. I think as part of the stipulation on this discussion we had, that this was by payroll checkoff in May except for a few who paid directly, and before May 28 they had paid directly to the Union. This has been represented to us this is what the Union records show.

We will stipulate to the fact. We have no knowledge about it, but if they tell us that is true, we will accept that, however, we would like to further stipulate Respondent Ehlers did not have this information.

Then we stipulated to the fact, but we want to object to its materiality and relevancy.

Mr. Fredricks: I would accept the stipulation with the same proviso, and a further proviso if these employees were terminated, if we don't have such a stipulation in the record, they were terminated by General Motors Corporation. [132]

Trial Examiner: With the reservations stated by Counsel for the Respondents, is it agreeable to the Charging Party?

Mr. Pappy: I already have stipulated to the fact that the employees were terminated by General Motors, and I will stipulate to it the third time, if that is necessary.

Trial Examiner: It is a little different than that.

As I understand Mr. Lund's position, he is stating that Ehlers did not know these people were paid-up members of the Union on the date he acquired the assets of General Motors.

Mr. Pappy: That is a tricky problem, Mr. Examiner, because there is evidence in the record already.

Trial Examiner: He doesn't want his participation in the stipulation to admit that fact.

Mr. Pappy: I agree the fact they did not know.

Mr. Fredricks: The Examiner has changed my proposal, but I will accept your modification.

Mr. Ansell: Likewise for the Charging Party.

Mr. Fredricks: I will accept it on behalf of Thomas Cadillac.

Trial Examiner: The stipulation is accepted into evidence.

Mr. Lund: I will have to make a note to ask my client that question. I was hoping we could avoid it.

Trial Examiner: Very well.

Off the record. [133]

* * * * *

Mr. Pappy: I would like to propose the following stipulation: That since June 7 with respect to Respondent Thomas, and June 9 with respect to Respondent Ehlers, dates being in 1965, the Painters' Union and the IAM have picketed continuously with rare exceptions since those dates to this date at the locations respectively of Mr. Thomas' Cadillac and Lou Ehlers' Cadillac.

Mr. Ansell: Charging Party will so stipulate.

Mr. Lund: We will so stipulate. I will stipulate as to Lou Ehlers. [134]

* * * * *

Trial Examiner: May we have a stipulation?

Mr. Lund: As long as they brought this out, I was going to propose parts of my case to stipulate that from June 9 on not a single employee of Lou Ehlers Cadillac who formerly was employed by General Motors refused to cross that picket line to come to work. [135]

* * * * *

Trial Examiner: I think it is material to indicate whether these individuals have an affection for the unit.

* * * * *

Trial Examiner: It is a presumption that when the man goes through the picket line he has no affection for the Union. At least it seems that way to me.

I think in a very recent case of the Capital Aviation Company, the Court reversed the Board on the basis that the Board had held even individuals going through picket lines might still be inclined to be members of the Union.

* * * * *

Mr. Lund: Do we have a stipulation of fact on that, Counsel?

Mr. Ansell: I will stipulate.

Trial Examiner: Is this true of Thomas?

Mr. Fredricks: The same stipulation with respect to [136] Thomas Cadillac with the exception the date is June 7.

Mr. Pappy: So stipulated.

Trial Examiner: The stipulation is accepted.

Obviously an inference can be drawn, I am sure, from the manner in which an employee behaves when he approaches a picket line as to whether he is a Union member or isn't a Union member. [137]

* * * * *

Mr. Lund: I have one other observation. [140]

Can I have the proposed Exhibit 16, because I don't know what form you have it in.

You have it in longhand. Somebody has to read it in longhand.

This is the affidavit of Mr. Graham. I called Mr. Pappy's attention to this, and he had no objection to my reservation about it. On page 3 in the paragraph beginning, "We met again that evening . . ." there is a reference to a date of May 20 or May 21. I am satisfied the correct date is something later than that.

I don't want to by agreeing to the affidavit for this to indicate we are necessarily bound by that date.

Secondly, there is a similar situation on a date. I don't know this is really material, but I can't envision it too far.

Mr. Pappy: Where is this first one?

Mr. Lund: Page 3.

At the bottom of the page where it says, "We met again that evening, which was about May 20 or 21."

Mr. Pappy: How much later was it?

Mr. Lund: Four or five or six days later.

Mr. Pappy: Before May 28? Was this after May 28 or before May 28?

Mr. Lund: It would be before May 28.

Then in the next paragraph it says, "About May 25 Mr. Ehlers [141] told me I could hire them."

Again, I think it was probably May 27 or the 26th. I didn't want to be tied down to those precise dates.

With that reservation, we have no objection to the exhibits.

Mr. Pappy: So stipulated.

Mr. Ansell: I will accept the reservation.

Mr. Fredricks: So stipulated. [142]

* * * * *

Mr. Pappy: I would like to propose what I hope is the final stipulation in the General Counsel's case in chief. That is that the individuals named on the last page of Mr. Thomas's deposition, which is General Counsel's Exhibit 18, and which lists and is entitled "Supervision and Foreman Service Department as of 6-7-65," and there are listed there one, two, three—seven individuals with certain titles next to their names, and that these individuals were upon that date and have been at all times material herein supervisors within the meaning of the Act, with one exception, which I will go into in a moment.

Mr. Fredricks: I don't know what you mean by all times material herein.

I would stipulate on those dates those gentlemen were supervisors within the meaning of the Act.

Mr. Pappy: As of 6-7-65?

Mr. Fredricks: Yes, with the exception of James Heathington. I don't know about him. We have to check that out.

Trial Examiner: Go ahead.

Mr. Fredricks: I am through.

Mr. Pappy: Can we have a stipulation on that with the exception of Heathington? [144]

Mr. Fredricks: Except Heathington, and I don't identify it in the record from the record I have procured from our payroll clerk.

Trial Examiner: Hearing no objection, the stipulation is accepted in the record. [145]

* * * * *

LOUIS W. EHLERS

was called as a witness by and on behalf of Respondent Ehlers and, having been first duly sworn, was examined and testified as follows:

Trial Examiner: State your name, please.

The Witness: Louis W. Ehlers.

Trial Examiner: Your address?

The Witness: My residence address is 210 North Rockingham, Los Angeles. [146]

DIRECT EXAMINATION

Q. (By Mr. Lund) What is your business address, Mr. Ehlers? A. 5151 Wilshire Boulevard.

Q. Have you ever been a witness in a case before?

A. No, I have not.

Q. You heard a stipulation a half hour or so ago about which employees of General Motors were dues paid-up members in May of 1965. Did you have any information as of June of 1965 as to which former General Motors employees were dues paid-up members in the IAM or the Painters' Union? A. No.

Q. Did General Motors at the operation of 5151 Wilshire Boulevard lease cars?

A. They did not.

Q. Does Lou Ehlers Cadillac at that location lease cars? A. Yes.

I perhaps better clarify that. Lou Ehlers doesn't, but a separate corporation does.

Q. The same ownership? A. Yes.

(Testimony of Louis W. Ehlers.)

Q. A separate corporation?

That is at the same location?

A. Same location.

Q. Same offices of this affiliated corporation?

[147] A. Yes. [148]

* * * * *

Q. Lou Ehlers Cadillac began operations at 5151 Wilshire Boulevard on what date?

A. June 1, 1965.

Q. When did General Motors cease operations at that location? A. May 28 of 1965.

Q. Did you at any time in your discussions and negotiations with General Motors prior to June 1 or prior to May 12 request General Motors to discharge or terminate its employees of 5151 Wilshire Boulevard?

A. No.

Q. Did you at any time request, or did you personally request anyone else on your behalf to notify any of the General Motors employees at 5151 Wilshire Boulevard they were being terminated? A. No.

Q. What is the stock ownership of Lou Ehlers Cadillac? [149]

A. Mrs. Ehlers has 42 per cent of the stock. Mr. L. G. Bennett has 5 per cent, and I have 53 per cent. [150]

* * * * *

Q. Does Mr. Edward F. Jennik have any capacity as an officer of the corporation?

A. He is assistant secretary.

Q. Does Lou Ehlers Cadillac Corporation or do you have any stock ownership in Thomas Cadillac?

A. No, sir.

(Testimony of Louis W. Ehlers.)

Q. Are you or any of the officers of Lou Ehlers Cadillac an officer or director of Thomas Cadillac?

A. No.

Q. Are any of the officers or directors of Thomas Cadillac an officer or director of Lou Ehlers Cadillac?

A. No.

Q. Or any of the officers or directors of General Motors or any of its subsidiaries officers or directors of Lou Ehlers Cadillac?

Q. Or any of the officers or directors of Lou Ehlers Cadillac an officer or director of General Motors or any of its subsidiaries?

A. No.

Trial Examiner: Mr. Pappy, are you claiming any alter ego? [150]

Mr. Pappy: I am not.

Trial Examiner: Mr. Ehlers, how do you recruit employees for your operations in your business here in Los Angeles?

The Witness: Several sources. We use the medium of employment agencies. We had newspaper ads, and I think that it can best be said we used the acquaintanceship route of certain of our people, asking if they knew of the availability of any prospective employees that would be suitable to us.

Trial Examiner: Did the employees who formerly worked for General Motors make written application for jobs at your establishment?

The Witness: Yes, they—it is my impression they all did: however, I didn't personally handle that.

Trial Examiner: Do you recall did you personally do the hiring, or is that delegated to some other person?

(Testimony of Louis W. Ehlers.)

The Witness: That is delegated. [151]

* * * * *

Q. (By Mr. Lund) This schedule, Mr. Ehlers, that we purchased from General Motors shows the purchase of Cadillac repairs parts and Cadillac accessories. Was the price that was paid for those the price a dealer pays in buying from the factory? A. Yes.

Q. Are the repair parts and accessories purchased by the Cadillac dealer from the Cadillac factory returnable to the dealer to the factory?

A. Yes, they are.

Q. There were some new Cadillacs acquired at that time, which the agreement recites were to be paid for by your financing company; were those acquired at a dealer's cost? A. Yes.

Q. Could you rather have taken those new cars from General Motors Cadillac operation at Wilshire Boulevard or have purchased those directly from the factory?

A. Would I have purchased them? Yes.

Mr. Lund: I want to give Counsel also the figure of the assignment which we cut out. That is at the one, two, [153] three, four, six, seven, the eighth line down on the first page of the assignment the figure is \$39,394.20. That is if you are willing to accept my word for it. [154]

* * * * *

Trial Examiner: Very well.

Q. (By Mr. Lund) Did you acquire in your transaction the purchase from General Motors any patents?

A. No.

Q. Did you acquire any personal files?

A. No.

(Testimony of Louis W. Ehlers.)

Q. The Union contract that has been put in evidence refers to a seniority lists that were either listed—that were either published or furnished or posted every so often. Did you acquire any such seniority lists?

A. No.

Trial Examiner: Mr. Ehlers, when did you first hear about that contract? [156]

The Witness: About the Union contract?

Trial Examiner: Yes.

The Witness: I think my first knowledge of it was some time in, I would say, March of last year.

Trial Examiner: Is this before or after you acquired the assets of General Motors?

The Witness: It was at the time I was being told of the availability of this particular dealership that it was casually mentioned as one of the conditions that existed. [157]

* * * * *

Q. (By Mr. Lund) Mr. Ehlers, at the time that you began operations on June 1 at 5151 Wilshire Boulevard, did you have any plans as to the necessity for making improvements in the building? [162]

A. Yes.

Q. Did you proceed with those plans as promptly as you could? A. Almost immediately.

Q. Would you tell us how much you paid in 1965 for leasehold improvements?

A. For leasehold improvements we paid \$75,000.

Q. Did you have to acquire all new signs?

A. Yes.

Q. How much did you pay for them?

A. \$7,000 worth.

(Testimony of Louis W. Ehlers.)

Q. How much did you pay for machinery and equipment and tools? A. \$5,000.

Q. For additional office furniture and equipment? A. About \$42,000.

Q. The stock of supplies, stationery forms, books, and so on; how much did you pay?

A. \$10,000, about \$10,000.

Q. This, of course, was nothing you bought from GM? A. No, none of this. [163]

Q. (By Mr. Lund) This was all done before the end of 1965? A. Yes.

Q. Included in these expansions, in these expenses, was a program of completely degreasing the shop?

A. Yes, a complete general renovation.

Mr. Pappy: Was the word degreasing?

Mr. Lund: Yes.

Do you want to explain what that involves briefly, Mr. Ehlers?

A. The facilities, we took them over on June 1, were quite contrary to the way I am accustomed to keeping a garage facility. The walls and the floors and the various equipment was just piled quite high with grease, and we spent, as I recall, about three week-ends with many, many gallons of degreasing equipment doing, not only the walls, but the floor and the equipment.

Q. You did this yourself?

A. Our employees did.

Q. I assume the degreasing operation probably did not include these figures of expense you just gave a moment ago? A. Oh, no.

(Testimony of Louis W. Ehlers.)

Q. During June of 1965, how much in dollars worth did you purchase from the Cadillac factory by way of Cadillac parts and [64] accessories?

A. About \$23,748.

Q. From other sources, I take it, you purchased gasoline, oil, tires, tubes, paint and so on?

A. \$7200 worth, approximately.

Q. \$7200, approximately, and this is in June of—

A. June of '65.

Q. How many new Cadillacs did you purchase directly from the factory in June of 1965?

A. About 132.

Q. How many used cars did you take in trade-in during June of 1965?

A. Eighty-nine.

Q. Going back to this assignment, some reference has been made to this, and I have given for the record the 22 unfilled new car orders that you took over from General Motors. Was this some sort of obligation or burden on Lou Ehlers Cadillac?

A. No.

Q. You got the deposits that they had received for those orders?

A. Correct.

Q. Did the profit on the fulfilling of those orders go to Cadillac Motor Car Division or Lou Ehlers?

A. Lou Ehlers Cadillac.

Q. You may remember, Mr. Ehlers, in reference to your [165] deposition, which is a little confusing, about taking over some contracts of purchase and selling.

Did this have reference to the 22 unfilled retail orders you were talking about?

A. Yes, I think it did.

Q. In the buy and sell agreement of May 12 in the paragraph headed "9th," there is a statement that

(Testimony of Louis W. Ehlers.)

you assume all the liabilities with respect to warranties on new cars and assume responsibility for making policy adjustments on new cars delivered by Cadillac Motor Car Division prior to June 1.

Is that type of obligation any different than the obligation any franchise Cadillac dealer has to fulfill with reference to warranties and so on new cars that were not purchased from that dealer?

A. There is no difference. [166]

* * * * *

Q. (By Mr. Lund) With reference to the lease that Cadillac Motor Car Company had on the premises of 5151 Wilshire Boulevard, you sublet for a period of how many years from Cadillac?

A. I am quite sure to October, 1957, roughly ten years.

Q. Does the lease between Cadillac Motor Car Division and [167] the owners of that building run for a longer period than that?

A. Yes, that is the original lease called for four five-year options beyond that date.

Q. And what was the rental in relation to the rental for the first ten years?

A. I think the rent is pretty much the same, except for perhaps the last two five-year options. Then I believe it diminishes below its present level.

Q. Does your lease allow for the four or five-year options? A. It does not.

Q. Did you attempt to get General Motors to allow you to have those four or five-year options in your sublease with Cadillac?

A. We sure did. In fact, it was quite disappointing.

(Testimony of Louis W. Ehlers.)

Q. They refused to give you that? A. Yes.

Trial Examiner: If you know, would you tell me whether or not your rental is greater or less than the rental which General Motors paid?

The Witness: It is the same.

Mr. Lund: Except for this additional amount on the leaseholding improvements, that \$15,000 figure, which is spread out.

Is my observation correct on that?

The Witness: Yes. [168]

Q. (By Mr. Lund) Did you have any understanding or agreement with General Motors to assume any Union contract it had in effect? A. No.

Q. You didn't receive any assignment of that Union contract? A. No.

Q. You didn't adopt it in any way, shape or form?

A. No.

Trial Examiner: Did you have any discussion with General Motors about the Union contract?

The Witness: Yes, there was a very casual mention of the fact that there was a Union contract when I first met with General Motors people in Detroit; when they introduced the potential availability of their dealership to me.

Trial Examiner: Go ahead.

The Witness: Then they simply said to me it was their plan to terminate all of their employees as of May 28, and I was on my own so far as I was concerned.

Trial Examiner: General Motors made no demand upon you to assume their contract with the Union?

The Witness: No, they did not.

Trial Examiner: Very well.

(Testimony of Louis W. Ehlers.)

Did they at any time tell you that the contract would be binding upon you?

The Witness: No, sir. [169]

Q. (By Mr. Lund) Did you acquire any of the assets of General Motors that they used in the operation of what I call the Bixel agency at 1076 West Seventh Street? A. No, sir.

Q. Or the used car lot across the street at that same address? A. No.

Q. Or any of the assets used at their lot at 501 South Vermont Avenue? A. No.

Q. I think you may have answered this in your reply to the inquiry from the Trial Examiner, but were all employees hired by you beginning June 1 and thereafter, whether they were hired from General Motors or any source, required to fill out your own employment application form? A. Yes.

Q. Immediately prior to June 1, what was your program or plan relative to the source of your employees including manager and supervision?

A. Well, I feel I am repeating myself. The Trial Examiner asked me this.

My source was employment agencies, newspaper ads, and the acquaintanceship method that we employed with the existing employees.

Q. My question was a little different. What source did you [170] follow? My question was immediately prior to June 1, what was your program or plan you were going to follow?

A. Well, that was my plan.

(Testimony of Louis W. Ehlers.)

Q. I take it when you say you were going to use advertising to hire, you were not in fact going to hire all of the GM personnel at 5151 Wilshire Boulevard?

A. Certainly not.

Trial Examiner: How long before you actually started operations had you hired your personnel?

The Witness: How long before?

Trial Examiner: Yes. Did you hire them after you had taken over?

The Witness: We hired, as I recall—we hired some people on approximately the 28th of May; some perhaps on the 27th of May; but it was quite close to our take-over date. We hired others June 1, June 2, June 3.

Trial Examiner: Referring to the service department of your establishment, did you operate it the very next day after General Motors had closed its service department down?

The Witness: The next working day.

Trial Examiner: The next working day.

Q. (By Mr. Lund) They ceased operating on Friday, May 28, as I understand? That was their last working day in the shop?

Mr. Ansell: I will stipulate to that fact. [171]

Q. (By Mr. Lund) You started June 1?

Trial Examiner: Did you have a full complement in the service department when you commenced on that date?

The Witness: No, we did not.

Trial Examiner: You hadn't hired all the employees you needed at that time?

The Witness: No. There was need for additional employees on our opening date.

(Testimony of Louis W. Ehlers.)

Trial Examiner: Very well.

Q. (By Mr. Lund) Who determined or made the judgment as to which of these employees in the shop, mechanics and so on, would be hired; whether they were former GM employees or people coming in in response to an advertisement? Who made that judgment of hiring?

A. Well, for a time it was done somewhat simultaneously between Mr. Baesemann, who was then service manager for Cadillac, and Mr. Graham, who was going to be his successor under our operation, and ultimately it was going to be done exclusively by Mr. Graham.

Q. Did you review the employment applications or interview any of those prospective shop employees and form any judgment as to whether to hire, or did you leave that up to Mr. Graham?

A. No, I left that up to Mr. Graham.

Q. Where with reference to the other employees, salesmen—let me go back a little bit. Are you by experience a mechanic [172] or otherwise qualified to judge the skills and abilities of a mechanic?

A. No, I am not. I just know whether the car runs the way it should or doesn't.

Q. With reference to salesmen, you are experienced in that end of the business? A. I think so.

Q. With reference, forgetting the shop now, the shop mechanics. A. Forgetting the shop?

Q. Forgetting the shop mechanics, the painters, hourly employees working back there, and considering the other employees, your salesmen, office and so on,

(Testimony of Louis W. Ehlers.)

was it your intention to participate in the determination or judgment as to what employees to hire?

A. Yes, certainly so along with the selected managers for these various areas.

Q. With reference to those in the GM employ as of May 28, and again I am talking about, let's say, salaried employees as distinguished from the shop hourly employees, including salesmen, had you sufficiently acquainted yourself with the individual on the GM payroll to determine and to make your own judgment as to whether you wanted those people in your employ?

A. No, the time wouldn't permit this. I had an awful [173] time learning the 90 names in a matter of a couple of weeks' time, plus everyone I met in Los Angeles was also a stranger to me. I just thought this had to develop as I had the opportunity and as our department managers had the opportunity to become acquainted with these various salaried people and then evaluate them as time permitted.

Q. Actually, between May 12, the time you signed the buy and sell agreement, and June 1, I recall this, that personally you were very busy?

A. That is correct.

Q. You were putting in long hours, Saturdays and Sundays and everything.

Another thing is during that period of time you had to dispose of your Milwaukee and Madison interests; is that correct? A. Yes.

Q. What were those interests?

A. They were both Buick dealerships—one in Milwaukee and one in Madison.

(Testimony of Louis W. Ehlers.)

Q. General Motors required you to divest yourself of those interests; is that correct?

A. It was part of the agreement when I decided to become a Cadillac dealer, to divest of these two interests. [174]

* * * * *

Q. (By Mr. Lund) How important to you, or will you explain for the record the importance of a good efficient shop to service automobiles?

* * * * *

The Witness: Well, I think it is absolutely vital without a dealer to—for a dealership to render outstanding service. It separates the good dealerships from the bad ones. [175] If one doesn't have good service, he has no right to expect to resell a customer his next car. He also has no right to expect repeat service business.

Q. (By Mr. Lund) Do I understand from your answer it does have a significant relationship to new car sales? A. I think so.

Q. Is this primary or secondary or major or an insignificant source of new car sales business?

A. I'd say it is very primary.

Q. What has been your position on service at your Buick agencies when you began operations at this Cadillac agency?

A. Well, I believe I had an enviable service reputation in both Milwaukee and in Madison. I have been commended many times verbally and occasionally in writing by the Buick Motor Division, and I truly intend to do at least as much in that regard here with Cadillac.

(Testimony of Louis W. Ehlers.)

Q. You referred to letters of commendation, and I show you a letter dated January 14, 1965, from L. O. Glasgow, zone manager, Buick Division, relative to service of your agency.

Is this one of the letters to which you referred?

A. Yes. [176]

* * * * *

Q. (By Mr. Lund) In the start up of your business on June 1, what were some of the steps that Lou Ehlers Cadillac was required to take with reference to licenses and bonds and that sort of thing?

A. Well, we had to obtain a dealer's license from the Department of Motor Vehicles.

Q. This is a separate dealer's license in the name of Lou Ehlers Cadillac?

A. Yes, this is true of anyone of the things I mentioned.

Trial Examiner: General Motors' license was not transferrable to you; is that right?

The Witness: No, sir.

Trial Examiner: You had to get a separate one for [177] yourself?

The Witness: Yes, sir, we had to.

Trial Examiner: Very well.

The Witness: We had to file an insurance certificate with the Department of Motor Vehicles under the California Financial Responsibility Law.

We had to post a \$5,000 bond with the Department of Motor Vehicles.

We had to file for a new business tax statement number.

Q. (By Mr. Lund) For the City of Los Angeles?

(Testimony of Louis W. Ehlers.)

A. For the City of Los Angeles.

We had to apply to the State Equalization Board, Board of Equalization—I am not sure which is correct—for a new sales tax number, and we had to post a \$10,000 bond with them.

We applied for an industrial waste permit from the City of Los Angeles.

Q. Did you obtain it?

A. And obtained it.

We applied for a license to operate a repair shop.

Q. You obtained it?

A. And obtained it.

We also had to make a deposit in our name with the California Gas Company or Southern Gas Company. I can't recall which name it is. [178]

Q. Local utilities?

A. Utility and also with power and water.

Q. That is the City of Los Angeles, Department of Water & Power?

A. Yes.

The others I just don't recall what they are.

Q. You had all new signs put up, I take it?

A. Yes.

Q. All new signs?

A. Yes, outdoor signs, yes.

Mr. Lund: Because I have taken the witness out of order, I will have to explain I will present evidence that General Motors had a favorable experience rating under the California Unemployment Insurance Law. California allows a lower rate to employers with favorable experience, and they were qualified for the lower rate.

(Testimony of Louis W. Ehlers.)

In your Unemployment Insurance Tax payment that was required, did you have to pay the full amount of tax, or were you able to take any benefit of the lower experience rating of Cadillac Motor Car Division?

A. My accountant tells me we are paying the maximum rate. [179]

* * * * *

Q. (By Mr. Lund) With reference to the California Unemployment Compensation Disability program under which the Examiner may not be familiar, you are required to deduct one per cent of the pay of an employee toward this disability fund. There is a maximum amount of earnings during a year on which you are required to deduct.

In your deduction of that amount and with respect to the maximum amount on which you are required to deduct, did you take into account at all the earnings of any of the employees at any previous employer, whether that is GM or anybody else?

A. No, we did not.

Q. With reference to the Social Security Tax payments that Lou Ehlers Cadillac had to make, which, again, are a percentage [180] of the payroll but not exceeding a certain maximum amount of earnings during a year, and in determining or applying that maximum, did you include any of the earnings of your employees from other employers including GM?

A. We did not.

Q. The same is true, I take it, with reference to the Social Security Taxes that were withheld from the employees' wages?

A. Yes.

(Testimony of Louis W. Ehlers.)

Q. The Unemployment Insurance Tax payment also is related to a percentage of the payroll and has a similar maximum of the earnings during the year, which is the same computation as your tax on unemployment insurance? A. Yes.

* * * * *

Mr. Pappy: I won't object to it.

Q. (By Mr. Lund) With reference to your Workmen's Compensation, was your costs or benefits determined in any respect in relation to the previous experience of General Motors?

A. Not to my knowledge. [181]

* * * * *

Q. With reference to the sale of used cars—the Examiner is not yet aware of it, but it appears in the deposition, and I will go into it with another witness in greater detail—but in addition to this Bixel location, General Motors had this used car lot on South Vermont, 501 South Vermont, all tied into the same operation.

You and your used car lot have only the facilities available at 5151 Wilshire? A. Yes.

Q. Does that space that you are confined to affect in any respect the amount of wholesaling you have to do, or did so?

A. I am not sure I understand the question.

Q. Let me approach it this way. Are you aware of whether or not in your operation relatively speaking, you wholesale more of your used cars than GM did?

A. Yes, we don't have the same physical facilities that GM had. They had three locations, as I recall.

Q. For storing and holding their used cars?

(Testimony of Louis W. Ehlers.)

A. And retailing their used cars. We are limited to about 33 car facilities.

Q. Because of that space limitation you have to wholesale more used cars than GM.

Trial Examiner: I take it you didn't take over all the used car facilities that General Motors had?

The Witness: We did not, sir. [182]

* * * * *

Q. How long have you been an automobile dealer for General Motors?

A. Oh, about eleven and a half years.

Q. If you can remember my question, please answer it.

A. Yes, I would say there would be a difference in the profits that are potentially available to a large wholesaler of automobiles compared to a smaller wholesaler, simply because there is more competition for the cars.

And, further, as a small wholesaler, you are put pretty much subservient to those people who call on you. If you are a large wholesaler, you got rather substantial numbers of wholesale buyers that are in the market for these cars, and, therefore, the more buyers there are, the more bidders, and it follows, I think, that the bids are higher. [184]

* * * * *

Q. (By Mr. Lund) There are some 15 or 17 used car dealers [185] listed under Cadillac, used Cadillac, new car dealers listed in the classified directory of the local yellow page section.

Are those all competitors of yours in the new car sales field? A. Yes, they are.

(Testimony of Louis W. Ehlers.)

Q. Can you give us the distances of some from your establishment to some of the closer of these competitors? A. Yes.

I think Hillcrest is about two and nine-tenths miles distance from us. Thomas Cadillac is about four and eight-tenths miles. Dixon Cadillac is less than five miles. Inglewood is less than eight miles.

Q. That is Buffington?

A. Buffington Motors in Inglewood.

Martin Motors in Santa Monica is less than ten miles.

Q. From Thomas this is the distance from your address at 5151 Wilshire Boulevard? A. Yes.

(The next-numbered page follows in proper sequence.) [186]

Q. Thomas Cadillac on Seventh Street, that is just one block off of Wilshire Boulevard, isn't it?

A. Yes.

Q. This Hillcrest listed on Wilshire Boulevard and Martin Motors listed is the same continuous boulevard running from downtown Los Angeles to the beach; is that correct? A. Yes.

Q. It is a major commercial boulevard in this area, is it not? A. Yes. [187]

* * * * *

Q. Your competition in new car sales comes from all these 12, 15, or 17 dealers in the metropolitan area?

A. Yes, it is—it does.

Q. It involves a significant amount of your sales problems? A. Right.

Q. I think this probably covers it.

(Testimony of Louis W. Ehlers.)

Is the same thing true at least to a considerable extent or at least those Cadillac dealers that are nearer to you than somebody out in Orange County? In your service and sales of Cadillacs, do you have competition from the Inglewood agency, the Hollywood agency, Thomas Cadillac, and Hillcrest? A. Indeed.

Q. And vice versa? A. Yes.

Q. You are competing with them.

As of June 1, 1965, and you may not want to give us the exact figures, but in a rough figure, what were the assets and total value of the assets of Lou Ehlers Cadillac?

A. Slightly in excess of a half million dollars.

Q. During the seven months that you operated in 1965, again in general figures, what were your total sales?

A. I don't have an exact figure, but I know they were under \$5 million.

Mr. Lund: We are going to offer this as Respondent [189] Ehlers' exhibit next in order.

Trial Examiner: You may mark it Respondent Ehlers' Exhibit 4.

(The document above referred to was marked Respondent Ehlers' Exhibit No. 4 for identification.)

Mr. Lund: This is a schedule which I personally prepared from the best information I can obtain at Lou Ehlers Cadillac, the number of employees, and for two respective months I have shown the following:

We will take the first column, "Management and Supervision," the number of employees Lou Ehlers had was 11.

(Testimony of Louis W. Ehlers.)

The I have a column headed "GM." This column headed GM is how many of those 11 were formerly employed at 5151 Wilshire Boulevard by General Motors.

The same thing is true with new car salesmen, the number we had in June and the number of those that worked at General Motors in May of 1965 at that address.

Then we have used car salesmen, office and others. I need to explain that is all other employees, except the last one which was shop, where I there tried to take the bargaining shop I understood GM operated with and include those employees who were comparable and identical and similar to that in the unit of GM.

Mr. Pappy: If there is any discrepancy from the actual [190] list of employees, those would take preference over this schedule. We have a list.

Mr. Lund: No, there isn't.

Mr. Pappy: We have a list of GM shop employees.

Mr. Lund: I didn't give any total of GM shop employees.

Mr. Pappy: That you brought over.

Mr. Lund: If there is any discrepancy, I am satisfied it has no meaning.

Trial Examiner: Is there any objection?

Mr. Pappy: I have no objection.

Trial Examiner: Respondent Ehlers' Exhibit 4 is admitted into evidence.

(The document above referred to, heretofore marked Respondent Ehlers' Exhibit No. 4, was received in evidence.)

* * * * *

I have just two short questions.

(Testimony of Louis W. Ehlers.)

Q. (By Mr. Lund) Mr. Ehlers, the document shows in the first week there were some seven car salesmen who were terminated. Were those quits or discharges by Lou Ehlers?

A. We discharged them.

Q. Those were former GM salesmen?

A. Yes.

Q. In the same way that exhibit shows a substantial reduction from 23 to 12 between June and November of the number [191] of former GM employees in your office and other categories. Does that difference reflect quite a bit former GM employees or discharges?

A. Discharges. [192]

* * * * *

Q. (By Mr. Lund) Mr. Ehlers, Mr. Jennik was used by you in what capacity of your operation in Milwaukee?

A. He had his own CPA firm, and he did our accounting.

Q. Did he come out to Los Angeles prior to your actually opening your operation of June 1 to work with you in starting up your operation?

A. I am a little hazy. I think he was here just prior to our opening, yes.

Q. He worked with you some days or weeks? I don't know how many. [195]

A. I think he was here ten days or two weeks.

Q. Was it during that period he was hired by you?

A. Yes, while he was here.

Q. That was early in June? A. Yes.

Q. He was hired as your business manager?

A. As business manager, right.

(Testimony of Louis W. Ehlers.)

Q. Your operation is done entirely, including all of the functions of all employees and supervision, at 5151 Wilshire Boulevard; is that correct? A. Yes.

Q. I take it you purchase your Cadillacs from the factory in Detroit? A. Yes.

Q. The Cadillac parts and the accessories?

A. Yes.

Q. Do you finance your new car purchases from Cadillac? A. Yes.

Q. Through what source?

A. United California Bank.

Trial Examiner: Is that a different financial agency than you had with General Motors?

The Witness: I don't honestly know who they used. If I had to guess, I would say they did not use United California.

Mr. Lund: We hope to establish that. I am having [196] difficulty finding the witness.

Cadillac didn't finance any of them. They were their own cars; is that correct, Mr. Ehlers?

A. I assume so.

Q. (By Mr. Lund) Did you resell at retail only the new cars that you have purchased from Cadillac?

A. Do I sell at retail only the new cars I purchased from Cadillac?

Q. Yes, all new cars you sell retail are those you purchased from Cadillac? A. Yes.

Q. Where did you place your customer installment financing?

A. Largely through United California Bank.

Q. Do you have any idea what proportion of that financing is through United California Bank?

(Testimony of Louis W. Ehlers.)

A. I would say 75 to 85 per cent.

Q. The used cars you sell, you sell only those that you take in on trade or purchased at your location?

A. Yes.

Q. You have a guard service?

A. No, we do not.

Q. Do you do your own service sales followup?

A. Yes, we do. [197]

* * * * *

Q. Do you or your supervision at 5151 Wilshire do all of your own hiring and processing of new hirees?

A. Yes.

Q. All of your own hiring? A. Yes.

Q. All of your own firing? [198] A. Yes.

Mr. Lund: I might say these questions will not make much sense, Mr. Examiner, because I wanted to first put on what GM does. This is in contrast to what happened at GM. This is out of order.

Q. (By Mr. Lund) Do you and your managers make all of the decisions concerning labor policy procedures and programs? A. Yes.

Q. The selections and placing of ads, administering all of your insurance policies? A. Yes.

Q. You do advertising for the sale of new cars?

A. Yes.

Q. And used cars? A. Yes.

Q. You place your own advertising through an agency? A. Yes.

Q. You do all your own purchasing? A. Yes.

Q. You do your own billing and collections?

A. Yes.

(Testimony of Louis W. Ehlers.)

Q. Make all of your own payments from your own office to vendors of materials and of services?

A. Yes.

Q. Have your own payroll and personnel files?

[199] A. Yes.

Q. Through your own bank account pay all of your own employees? A. Yes.

Q. Make all of your own credit determinations?

A. Yes.

Q. Maintain all of your own books of account?

A. Yes.

Q. Select your own attorneys? A. Yes.

Q. Your own CPA if and when you need one?

A. Yes.

Q. Your own medical doctors for Workmen's Compensation? A. Yes.

Q. Your own vendors of materials and supplies?

A. Yes.

Q. Subcontractors? A. Yes.

Q. Make your own decisions relative to capital improvements? A. Yes.

Q. Is there any business decision you can think of that is a part of the corporation that you and your managers do not alone make in your operations at 5151 Wilshire Boulevard?

A. I can't think of any.

Q. Do you do any subcontracting with Thomas Cadillac? [200] A. No.

Q. Do they do any subcontracting with you?

A. Not that I know of.

Q. Do you have any relationship with Thomas Cadillac other than being a competitor of theirs?

(Testimony of Louis W. Ehlers.)

A. No.

Q. With whom is your bank account?

A. United California Bank.

Q. What branch?

A. Detroit-Wilshire Branch.

Q. Will you tell me what the names are of the insurance companies that you have and what they cover?

A. Yes, we have Universal Underwriters. Give me a moment. I will check my sheet here and be accurate.

Universal covers our building insurance, our contents, plate glass, liability, Workmen's Compensation. The Hartford Steam Boiler & Inspection Company covers our boiler insurance. Banker's Life Company covers our life insurance, hospitalization and medical. The Insurance Company of North America covers our group disability. Argonaut Insurance Company covers employee dishonesty.

Q. Who is the doctor you use for on-the-job injuries?

A. For instance, Francis E. Hilton.

Q. Is that at 1945 South LaCienega?

A. That sounds right. [201]

Q. Do you have pre-employment physicals?

A. No, we do not.

Q. Do you have an insurance consultant?

A. Yes, there are two. Harry Pravorne—

Q. And Ken Williams? A. Williams.

Q. You have an advertising agency? A. Yes.

Q. What is the name of it?

A. Steve Shoemaker.

Q. Who are your attorneys?

A. Latham & Watkins.

Q. In your operations, do you use the American Building Maintenance Company? A. No.

(Testimony of Louis W. Ehlers.)

Q. Addressograph? A. No.

Q. American Wastepaper Company?

A. I don't believe so.

Q. Do you have any type of service contract with Pinkertons? A. No.

Q. Or Underwood? A. No.

Q. Or Burroughs? [202] A. No.

Q. Or Electrical Products Division of the Federal Sign & Signal Corporation? A. No.

Q. International Business Machines? A. No.

Q. City Linen Service?

A. I don't believe so.

Q. Floodlight Service? A. No.

Q. Athletic Club Floor Shop? A. No.

Q. Do you have a service contract for maintaining signs and floodlights?

A. Well, we don't have a service contract on the signs, because they are so new they are still under their first year's warranty.

For daylight electrical problem, we use the Astro Electric Company.

Q. How about the service on the office equipment?

A. The name escapes me. It is International something or the other.

Q. Is it Business Machines, Ltd.?

A. Business Machines, Ltd. That sounds right.

Mr. Pappy: IBM, in other words? [203]

Mr. Lund: No, Business Machines, Ltd.

Mr. Pappy: I am not familiar with it.

The Witness: It is not IBM.

Q. (By Mr. Lund) For linen supplies and that kind of service, whom do you use?

(Testimony of Louis W. Ehlers.)

A. Gosh, I can't think of the name.

Trial Examiner: Is it different from the one that was used by General Motors?

The Witness: I believe so.

Mr. Lund: Industrial Linen Service. I will have to get another witness to cover that.

Q. (By Mr. Lund) How about air conditioning service? Do you have a service contract there?

A. Yes, with the Comfort Air people.

Q. Comfort Air?

A. Comfort Air, I believe is the name.

Q. Your deposition covers the matter of the incentive compensation and how it is computed and so on. When an employee, when there are occasions when an employee is not paid on an incentive compensation basis, but an hourly rate is involved instead of incentive earnings;

Are your hourly rates for the different classifications or shop employees different from those that General Motors had under their contract? A. Yes.

[204]

Q. How about the salaries and incentive compensation for your salesmen? Are they different from what General Motors had? A. Yes, they are.

Q. Your salaries and compensation for your office and other salaried employees, are those identical or different from General Motors? A. Different.

Q. Would that be in every instance or most or some?

A. I think in all instances with the possible exception of one.

Trial Examiner: Were these salaried rates determined by you in your establishment?

(Testimony of Louis W. Ehlers.)

The Witness: By myself and business manager or sales manager, as the case may be.

Trial Examiner: Was there some reason why your operation would require perhaps a different type of working arrangement on wage rates than General Motors?

The Witness: Well, we felt that in some cases we should pay more for the services that we were asking for, because we expect quality when we hire people.

Q. (By Mr. Lund) Expect what?

A. Quality.

And are willing to pay for more quality people.

We tried to operate with a minimum number of people and [205] pay those people better than average wages.

Trial Examiner: Was this in conformity with the normal policy that you have been applying in your other establishments?

The Witness: Yes, sir.

* * * * *

Q. (By Mr. Lund) Do you need a franchise or some sort of agreement with General Motors for the Cadillac Motor Car Division of General Motors to operate an automotive repair shop?

A. Just an automotive repair shop?

Q. Yes. A. No.

Q. Suppose you wanted to operate an automotive repair for Cadillacs; would you need any agreement with General Motors exclusively for Cadillacs?

A. No. [206]

* * * * *

A. What I call the shop area.

(Testimony of Louis W. Ehlers.)

Q. What does that include? All of what? We are now on the first floor of your building.

A. What people would it include?

Q. People or operations.

A. Well, it would include all of our management staff for the service department, our service advisors our dispatchers, our car attendants, mechanics, painters, lubricators, washers, greasers.

Q. Parts? A. Parts department. [208]

* * * * *

Q. The building area that I have described here by the line, will you tell us what part of that is more than one floor?

A. The portion that shows is more than one floor.

Q. Yes.

A. You would have to draw a straight line from, let's see, the eastern line of our used car lot, which would be to your right as you look at it straight back to Carling Way, and then that portion of the building is two floors and roof parking.

Q. Take it another way. From the corner of Orange and Wilshire, 155 feet west, is the area that is two stories and the roof; is that correct? A. Yes.

Mr. Pappy: In other words, the eastern portion of the building?

The Witness: The eastern portion, omitting that behind the used car lot, which is only one story.

Q. (By Mr. Lund) You have drawn the line correctly. The one-story part is 115 feet from Sycamore to the East? A. Yes.

Q. That is one story, and the balance is the two-story and the roof? Is that correct? A. Right.

(Testimony of Louis W. Ehlers.)

Q. You mentioned service advisors. What are service advisors? [211]

A. Service advisors are people who liaison between the customer and the Company.

Trial Examiner: Do you know whether or not General Motors had service advisors?

The Witness: Yes, they did.

Mr. Lund: When I drove over to your shop, they are the first persons who greet me?

The Witness: The service advisor will greet you and offers to write up what you wish done to your car or need done to your car.

Q. (By Mr. Lund) What does he do after he writes up an order for service on my car?

A. What does he personally do?

Q. Yes.

A. Well, his responsibility is to get the ticket to the dispatcher, who, in turn, dispatches the work to the appropriate areas called for on the repair order. [212]

* * * * *

Mr. Pappy: I propose the following stipulation, Mr. Examiner: that service advisors or the term service advisors or service salesmen or service writers are used synonymously for the purposes of this case. They are synonymous terms.

I propose also that we stipulate that under the General Motors contract with the IAM and the Painters' Union, service advisors or service salesmen or service writers were excluded from both the Painters' unit and the IAM unit.

Trial Examiner: Is that stipulation agreeable with all parties?

(Testimony of Louis W. Ehlers.)

Mr. Lund: Under the nomenclature in the GM contract, "Service Salesmen," we so stipulate.

Trial Examiner: The stipulation is accepted for the record. [213]

* * * * *

Q. (By Mr. Lund) What type of knowledge or experience is required for a service advisor?

A. Well, he certainly—what would be most desirable, he had previous mechanical background in some areas of automotive mechanics as possible. This is best, that he is equipped to diagnose problems and to talk intelligently to customers.

Trial Examiner: How many employees do you have in that classification?

The Witness: We either have six or seven, sir.

Q. (By Mr. Lund) Do any of those or have all of them had previous mechanical experience?

A. I know many of them have. I can't vouch whether all of them have. [215]

Q. Have some of those previously worked as mechanics in the shop? A. Yes.

Q. Does the service advisor ever have occasion during the course of his work day to consult with or confer with a mechanic or painter or anybody that is doing work on a car he has taken an order on?

A. Yes.

Q. Is it something that is frequent or infrequent?

A. I would say quite frequent. He would confer perhaps mostly with our foreman, also with the mechanic.

Trial Examiner: Is his supervision the same as the mechanic's?

(Testimony of Louis W. Ehlers.)

The Witness: Yes.

Q. (By Mr. Lund) The mechanics and service advisors are under your service manager?

A. Correct.

Q. Does he have occasion to take a car out and road-test it together with the mechanic?

A. Yes. In fact, it is his responsibility.

Q. Is this something that will frequently happen when the two will take the car out together?

A. Yes.

Q. Is this in connection with the diagnosis of the trouble or testing the work that has been done, or both? [216]

A. Well, it could be both, but mostly I would say it is double-checking if the work has been done properly. [217]

* * * * *

LOUIS EHLERS,

having been previously duly sworn, resumed the stand and testified further as follows:

DIRECT EXAMINATION (Continued)

Trial Examiner: Mr. Ehlers, may I ask you a question?

Did I understand you to say you did hire some General Motors' employees? Did you, as head of your organization, establish a policy with respect to which ones should be hired and which ones should not be hired?

The Witness: No, I had no preconceived notions of this. Insofar as the shop areas were concerned, I

(Testimony of Louis Ehlers.)

had to rely upon [221] the judgment of management under GM.

Insofar as the balance of the employees were concerned, I think I testified yesterday that time just didn't permit the proper acquaintanceship.

Trial Examiner: I was primarily interested in service employees.

The Witness: No, I relied totally upon the judgment of Mr. Baesemann, who was then service manager for Cadillac, and Mr. Graham, who was a shop foreman for Cadillac and whom we hired.

Mr. Baesemann stayed with General Motors.

Trial Examiner: I take it they reviewed the application and work history of the various applicants for employment, and chose the ones which they felt would be best fitted for your operation?

The Witness: Yes, sir, based on their ability.

Trial Examiner: Did they state your position on it?

The Witness: That is correct.

Trial Examiner: Very well.

I have one further question, Mr. Ehlers.

Did the union at any time approach you before you actually commenced operations?

The Witness: I received a letter from Mr. Ansell asking for a meeting.

Trial Examiner: Was it before you had actually commenced [222] operating—

The Witness: Yes, it was.

Trial Examiner: —the business?

Did you reply to that letter?

The Witness: I referred it to my attorney, Mr. Lund.

(Testimony of Louis Ehlers.)

Trial Examiner: All right.

Q. (By Mr. Lund) You had anticipated the very next question of my long list.

Other than that letter of May 19 from Mr. Ansell, which is in evidence, did you have any other communications from either unions to any of its representatives to yourself? A. No, I did not.

Q Or to Lou Ehlers Cadillac, other than to myself?

A. No.

* * * * *

Mr. Ehlers, with reference to your shop employees and those job categories, or at least what you understood were the [223] job categories that were under the GM union contract, and with reference to any other group of your shop employees as of June 1, 1965 and thereafter, what was your belief as to whether or not a majority of such employees desired to have either the Machinists Union or the Painters Union represent them for purposes of collective bargaining?

* * * * *

The Witness: Well, personally I had very strong doubts that the union represented the majority of these employees, and I felt this way for a number of reasons.

Q. (By Mr. Lund) What was the basis then for your feeling that way?

A. The basis was that at no time did any one employee or any group of employees ever tell me that he or they wanted the subject unions or any unions to represent them.

I also never heard this from any other source about these [224] employees.

(Testimony of Louis Ehlers.)

I had been given to understand that the shop employees of other dealerships in Los Angeles apparently did not see fit to be represented by unions, because none of the other dealerships in Los Angeles were unionized.

Trial Examiner: Did any time during the period of your hiring of employees, did any of your supervisors report to you that any of the employees they hired had mentioned anything about the union to you?

The Witness: I am sorry? Would you ask me that again?

Trial Examiner: Did any of your supervisors ever report to you, while they were hiring employees, any employees who mentioned the union or discussed the union with you?

The Witness: Our supervisors were instructed in the process of interviewing.

Mr. Lund: If I may?

Trial Examiner: Did they report to you?

Mr. Lund: You are not answering the question.

The Witness: They did not discuss union.

Trial Examiner: Did they report to you any employee mentioned union to them?

The Witness: I recall Mr. Graham having reported that on new hires some of them wanted it clarified immediately. If it was going to be a union shop, they weren't interested in working there. [225]

Trial Examiner: Did you get any reports in regard to those employees, or with respect to those employees working for General Motors?

The Witness: Again, Mr. Graham reported to me in the course of interviewing former GM employees that

(Testimony of Louis Ehlers.)

two of them reported that they were going to voluntarily give up their union cards.

Trial Examiner: Very well.

Mr. Lund: I don't know if we have answered the previous question.

Going back to the question I asked, what was the basis for your belief the majority did not want to be represented by the union?

The Witness: I had some more things I would like to say.

Q. (By Mr. Lund) There are some circumstances you would like to state?

A. I was aware that there was an NLRB election some years back, and that the IAM and the Painters Union had won the election.

However, I had also been told that the election was conducted separately always between Bixel and Wilshire, and the very high interest for the union was at Bixel. And the separate voting disclosed that the vast majority of the Wilshire employees had voted against the union.

I also felt that the employees would feel differently [226] about union representation under a locally owned, locally managed dealership than they would have under the—well, the world's largest manufacturing corporation and absentee management.

Trial Examiner: On what did you base that conclusion?

The Witness: Well—

Trial Examiner: Did you discuss the matter with any of the employees?

(Testimony of Louis Ehlers.)

The Witness: No, this is a personal conviction. I felt—I personally feel one of the basic reasons for unions' existence is the fact that the owners or the managers become pretty far removed from their employees, and the fact that they are perhaps neglected or inattentive to their employees is one of the basic reasons for unions' existence.

This wouldn't happen with my method of operation. I felt that I have always treated my employees fairly. I believe in good wages, above-average wages. I believe in superior working conditions, and I think that I have established both at Wilshire.

I also feel that my beliefs along these lines have been confirmed by the fact that the unions never have asserted to me that our employees wanted to be represented by them.

Also, that the union didn't request a certification petition from the NLRB, and perhaps last that our employees, all employees, former GM employees, and new hires, at all times [227] crossed the picket line from day one. These were my sincere beliefs.

Trial Examiner: Have you received any indication from any of the employees that are presently in your employment that they desired representation with the unions?

The Witness: No, sir, at no time.

Q. (By Mr. Lund) You mentioned that your information was that the other automotive shops were not organized. What is your information as to how your wages and rates and conditions of employment compared to those existing in these other automotive shops?

(Testimony of Louis Ehlers.)

A. I would say we are considerably higher than the average shop, and I know from personal visits to a relatively few other automobile dealerships our working conditions are far superior.

Q. Have you ever operated under a union?

A. Yes, at Madison, Wisconsin.

Q. For how long a period?

* * * * *

A. From the date I acquired the facility until the day I sold, which was, I believe, August of '59 through May 15 of [228] 1965.

Q. That was in Madison, Wisconsin?

A. Yes.

Q. A Buick agency? A. Yes.

* * * * *

Q. (By Mr. Lund) It looks like about six years that you operated under a union at Madison. How did you get along with the union during that six years?

A. Very well. [229]

* * * * *

Q. (By Mr. Lund) Did you have any strikes during the course of your union relationship?

A. No.

Q. Any arbitrations? A. No.

Q. Any major disagreements or battles or wars with the unions of any type?

A. I don't even know of a single grievance we had in six years. [230]

* * * * *

Q. (By Mr. Lund) Mr. Ehlers, prior to May 12, when you signed this buy-and-sell agreement with GM,

(Testimony of Louis Ehlers.)

had you received a copy of the basic GM contract for examination purposes?

A. You mean the union contract?

Q. Yes. I am sorry. I meant the union contract.

A. Yes, I had.

Q. Were you somewhat familiar with the provisions thereof in it?

A. Well, I would say so, yes.

Q. Did you observe in that contract any terms or conditions which in your mind it was impossible or it would be impossible for an independent agency like yourself to comply with? [236]

* * * * *

A. Yes.

Q. Such as?

A. You are asking me such as?

Q. Yes.

Trial Examiner: You may have a continuing objection to this line of questioning.

Mr. Ansell: I would like to join in that objection.

Trial Examiner: Very well.

Go ahead.

The Witness: Some of the other reasons that I recall is first off it was at least a two-plant contract. As I recall, again it called for a grievance committee to be made up of three employees from Bixel and one employee from Wilshire.

The contract contained provisions for seniority that grouped the employees into one unit, and seniority governed advancements and governed layoffs.

And there would be no way—obviously I have no control over Thomas Cadillac, and I feel he has none over me. I could hardly exchange employees with him, based on seniority or lack of seniority.

(Testimony of Louis Ehlers.)

The contract also had provisions, I think, for GM employees to maintain seniority and benefits if they were [240] transferred to another GM defense plant.

It contained provisions for insurance that I think were unique to General Motors. Again the benefits from these plants, I think, were contingent upon seniority and length of participation in the plants.

It had provisions for a GM pension plan, for a GM income security plan, both of which were financed by General Motors through trust funds.

And it called for maintaining records on employees, their seniority, transfers, and I had no access to any of these things, nor did I have any opportunity. I can't conceive of my having any opportunity to ever join with General Motors as a part of their trust fund.

Trial Examiner: At any time did either one of the unions offer to sit down and discuss with you the modifications of the contract to fit the needs of your operation? A. No, they did not.

Q. (By Mr. Lund) Mr. Ehlers, you talked about, and you were describing their insurance and pension, and the ISB plans. You referred to seniority and length of participation.

Were you talking about seniority at Wilshire and/or Bixel addresses, or was this GM seniority?

A. Under the insurance plan?

Q. Yes.

A. This was seniority through any of their plants, as I [241] understand.

Q. General Motors' seniority? A. Yes.

Q. This is true under the pension plan as you understand it?

(Testimony of Louis Ehlers.)

A. I would say so. I get a little confused reading some of these things. [242]

* * * * *

Q. (By Mr. Lund) Mr. Ehlers, prior to the time of May 12 in connection with your examination on the GM union contract, were you aware that it contained no so-called successor and assigns clause?

A. Yes, I was.

Q. Or any language purporting to make it binding on the purchaser of any GM assets? A. Yes.

Q. Prior to May 12 what was your understanding as to whether or not that contract would be binding; that union contract would be binding upon you and your operations?

* * * * *

The Witness: My impression was the contract was not binding. In fact, my memory is clear on the point. I believe Cadillac pointed this out to me in my preliminary discussions with them in Detroit, when we were talking about the availability of the Los Angeles franchise. [243]

* * * * *

Mr. Lund: I wonder if I could propose a stipulation?

I discussed it earlier, and I think you gentlemen would accept it.

I had advised the witness prior to May 12 that the NLRB had consistently held even in a successorship situation, if it were found to be one, the contract of the union of the predecessor employer was not binding on the successor.

(Testimony of Louis Ehlers.)

Would you stipulate that if I took the stand I would so testify?

Mr. Fredricks: I would like the same stipulation to run to Thomas, because those are the facts as far as Thomas is concerned.

Trial Examiner: Any objection to the stipulation? If not, it is accepted as part of the record. [244]

* * * * *

Q. Did you walk through the plant, or the shop facility, I should say? A. Yes.

Q. Of the shop, also? A. Yes.

Q. Shop area? A. Yes.

Q. Did you in a general way familiarize yourself through these visits with the equipment and the physical setup of the shop area?

A. To a degree, yes.

Q. As you observed the machinery and the equipment and the tools and the parts that were all opposite the general sales area? A. In a casual way, yes.

Q. Did you observe at any time the shop employees at their work? A. No, not specifically.

Q. Did you see them working? A. Yes.

Q. Is it not a fact that what those employees were doing at that time in May was, generally speaking, servicing new and used Cadillac automobiles?

A. Yes. [246]

* * * * *

Q. (By Mr. Ansell) You testified that insofar as purchases were concerned, since Lou Ehlers Cadillac began operations, that there was office equipment purchased of approximately \$42,000. Is that correct? Did you so testify? A. Office equipment?

(Testimony of Louis Ehlers.)

Q. Yes. That is what my notes reflect. Am I in error?

Mr. Lund: Including furniture? [255]

The Witness: Furniture and office equipment, yes.

Q. (By Mr. Ansell) Can you tell us when these purchases were made, to the best of your ability?

A. Oh, some time between June and, I would say, the first 45 days of operation the commitments were made. It was a matter of taking time to select, and so forth, before we finalized our arrangements. But we started on the program almost from day one. [256]

* * * * *

Q. Who was the underwriter when the operation was a factory branch under GM, if you know?

A. I don't know.

Mr. Lund: I will present evidence on that.

Mr. Ansell: Can you tell us who it is?

Mr. Lund: I am going to present an affidavit. It was not Universal Underwriters. I can tell you, if you want it.

The workmen's compensation was the Royal Indemnity Company. [258]

Trial Examiner: Will you so stipulate?

Mr. Ansell: I will stipulate.

Trial Examiner: The stipulation is accepted. [259]

* * * * *

I have, except for the modification. I think in my very last stipulation before we went into it I reserved the right to re-open the case with respect to Mr. Heathington.

Trial Examiner: Was that a matter to be settled?

Mr. Pappy: Yes.

Mr. Fredricks: We have resolved it.

Trial Examiner: Let's resolve it on the record.

Mr. Pappy: His name appears on the last page of General Counsel's Exhibit 18 as being one of the supervision and foremen of the service department as of 6-7-65, among other listed foremen.

It can be stipulated that as of 6-7-65 Mr. Heathington was one of the supervisory personnel at Thomas Cadillac and was a supervisor within the meaning of the Act, but that his employment lasted only from June 4 through June 10.

Trial Examiner: Is that stipulation acceptable?

Mr. Fredricks: Yes, that stipulation is acceptable.

Trial Examiner: Is that agreeable with the Charging Party?

Mr. Ansell: Yes.

Trial Examiner: It is accepted in the record. [263]

* * * * *

JOSEPH R. TOOMBS

was called as a witness by and on behalf of Respondent Thomas and, having been first duly sworn, was examined and testified as follows:

Trial Examiner: Be seated, and state your name, please. [288]

The Witness: Joseph Ray Toombs.

Trial Examiner: Your address?

The Witness: 11609 South Cimmaron, Los Angeles.

DIRECT EXAMINATION

Q. (By Mr. Fredricks) Mr. Toombs, are you presently employed?

A. It is a technical point, yes.

(Testimony of Joseph R. Toombs.)

Q. Were you formerly employed by Thomas Cadillac?
A. Yes.

Q. And did you terminate that employment recently?
A. Yes.

Q. How recently, sir?

A. I will be terminated as of tomorrow, or the last of February.

A. And you were formerly with General Motors Corporation?
A. Right.

Q. Were you employed in the Cadillac Motor Car Division of General Motors Corporation?
A. Yes.

Q. Where was the location of that employment, sir?
A. 1076 West Seventh Street.

Q. What was your job with the General Motors Corporation?
A. Supervisor of accounting.

Q. What was your job, or is your job at Thomas Cadillac; that is terminating this month?

A. Business manager. [289]

Q. Would you briefly describe your duties as supervisor of accounting for General Motors Corporation?

A. I was in charge of all documents preceding the preparation of the financial statement that was accounts receivable, accounts payable department, and any other supporting documents that go under any other employees, or documents that went into the making up of the financial statement for both branches.

Q. As "both branches," you are referring to the Seventh Street branch?
A. Yes.

Q. The Bixel and the Wilshire branch, I believe?
A. Right.

Q. What about the Vermont Avenue lot? Was that includable, too?

(Testimony of Joseph R. Toombs.)

A. That there was not a financial statement made by the Vermont lot. The business that transpired at the Vermont lot was taken through the branch which originally took the car in.

Q. Now your job as business manager with Thomas Cadillac, would you briefly describe those duties, please, sir?

A. That was the entire financial operation, commencing forecasts compiling daily material for the financial statement.

Q. Did it also include supervision of the accounting department and the people in that department?

A. That is true.

Q. Are you familiar with the accounting practices and [290] procedures with respect to General Motors Corporation's operation at Seventh Street and at the Wilshire branch?

A. Yes. I worked for General Motors Corporation at that one location for 15 and half years, so I should be.

Q. At the one location for 15 and a half years?

A. Right.

Q. Where was the central accounting office, if there was a central accounting office, for General Motors with respect to both branches?

A. 1076 West Seventh Street.

Q. Is that where your office was? A. Yes.

Q. Is that where you testified you did the summarization of accounting? A. Right.

Q. Was this a general ledger?

A. There were two general ledgers, one for the Wilshire store and one for the downtown store.

(Testimony of Joseph R. Toombs.)

Q. Do you know where the posting of the general ledger was done?

A. At Seventh and Bixel.

Q. Was it done under your supervision and control?

A. Yes.

Q. Was it done for both stores at Seventh and Bixel? A. Yes. [291]

Q. Was there a preparation of a financial statement for both branches? A. Yes.

Q. Were they separate financial statements, or one?

A. They were separate financial statements, and there was also a consolidated statement made of the two stores.

Q. Was this done under your supervision and control? A. Yes, it was.

Q. Where was that done, sir?

A. At 1076 West Seventh Street.

Q. Was that done for both branches at that location? A. It was.

Q. Was there a general manager over both the Bixel store and the Wilshire store to restrict this timewise, say, for the last year or two prior to June 11 of 1965?

A. Yes.

Q. Was he in charge of both of those stores?

A. Yes.

Q. What was his name?

A. L. G. Ferzackerly.

Q. Did he have an office? A. Yes.

Q. Where was that office located?

A. He had one at 1076 West Seventh Street.

Q. Was that where he operated out of? [292]

A. Right.

(Testimony of Joseph R. Toombs.)

Q. He was in complete charge of both of these branches? A. True.

Q. His functions as general manager were conducted out of that location? Is that correct?

A. Correct.

Q. Did the branches have managers?

A. Yes.

Q. Are the two stores, individual stores?

A. Yes.

Q. Under Mr. Ferzackerly? A. Right.

Q. Can you remember who those gentlemen were immediately prior to June 1, 1965?

A. The Seventh and Bixel branch was Jim Wilson, and the manager at the Wilshire store was Jim Hern-
don.

Q. Did you have some accounts receivable?

Trial Examiner: Who is the official over those two managers?

The Witness: L. G. Ferzackerly was the general manager.

Trial Examiner: He was over both branches?

The Witness: Right.

Q. (By Mr. Fredricks) Who was over Mr. Ferzackerly?

A. The man in Detroit.

Q. Somebody in Detroit? [293] A. Yes sir.

Q. I take it then that Mr. Ferzackerly received his orders from somebody at General Motors Corporation in Detroit? That is true.

Q. So far as your accounts receivable or credit is concerned, was there a credit manager?

A. We had one credit manager.

(Testimony of Joseph R. Toombs.)

Q. One credit manager for Bixel, and one credit manager for Seventh Street, or one for the both stores?

A. One credit manager that was located at 1076 West Seventh Street that passed on all credit for both locations.

Q. In other words, if I went into the Wilshire store and wanted to have a repair job done to my car, and I wanted credit and I had no credit established, I would make application to whom?

A. The statement might be taken by the employee at the Wilshire store, but the account was followed through and passed on by the credit manager at Seventh and Bixel.

Q. In other words, he was credit manager for both locations? A. That is true.

Q. How about the accounts receivable? Where was the billing done, and so forth?

A. The accounts receivable ledger as such was kept at 1076 West Seventh. That was the receivables for both the Wilshire store and for the store at 1076.
[294]

Q. What about the accounts payable?

A. Accounts payable, duties for both stores, was done at the Seventh and Bixel store.

Q. Did General Motors Corporation with respect to the two stores at Bixel and Wilshire have a comptroller?

A. Yes.

Q. What was his name, sir?

A. T. E. Cliff, C-l-i-f-f.

Q. Was he your boss, so to speak? A. Yes.

Q. Did he have an office? A. Yes.

Q. Where was that office located?

(Testimony of Joseph R. Toombs.)

A. At 1076 location.

Q. Was he comptroller for both locations?

A. Yes.

Q. All of the administration then so far as the comptroller's office was handled out of the Bixel store?

A. True.

Q. For both locations? A. Yes.

Q. Did the General Motors Corporation sublet any repair work? A. Yes.

Q. From Bixel? A. Yes. [295]

Q. At Seventh Street? A. Yes.

Q. Do you know how that sublet work was handled?

A. We had purchasing agent as such located at Seventh and Bixel, and he was in charge of making any deals with vendors.

Q. For both stores? A. Yes.

Trial Examiner: Do you know whether or not there was an interchange of any employees between the two establishments?

The Witness: There were at times. I know of one specific instance. I can't recall a great deal of this, but I do know of one specific instance this did happen.

Trial Examiner: What was that instance?

The Witness: This was, I think, Charles Moller, who was shop superintendent at the Seventh and Bixel location. I think he on occasion had to go to Wilshire on a vacation relief, or he went out there on occasions for safety feature campaigns, and this type of curriculum.

Trial Examiner: Very well.

Q. (By Mr. Fredricks) Do you know how the building maintenance work was handled?

(Testimony of Joseph R. Toombs.)

A. Yes. We had a building engineer, Mr. Joe Drew, and an assistant, Gene Burrell, and they maintained the store at Seventh and Bixel, and any maintenance work that had to be done on the Wilshire store, they were also sent out there to take [296] care of the Wilshire building.

Q. They handled the maintenance for both locations? A. That is true.

Q. All during my interrogation I have been talking about a time period in 1965 when General Motors Corporation operated the Bixel store and the Wilshire store. Is that your understanding of my questions?

A. Right.

Trial Examiner: Mr. Toombs, do you know of any occasions where any of the service employees were transferred back and forth between the two establishments?

The Witness: For a definite individual, I do not know the time.

Trial Examiner: You don't know?

Very well.

Q. (By Mr. Fredricks) Can you tell me, sir, if you know, how the payroll was handled for the Bixel store?

A. The payroll department, which consisted of four individuals, was all located at 1076 West Seventh. They accumulated the hourly time pay; made the pay checks; and made the W-2 forms.

Any payroll reports, anything dealing with interviewing employees by sending them to the physician first for a pre-employment physical was done from Seventh and Bixel.

Q. Those employees would be placed in one of the two stores, if hired? Is that a correct statement? [297]

(Testimony of Joseph R. Toombs.)

A. The employee was actually hired by the individual supervisor in the location that he was needed, but he was processed through the Seventh and Bixel location.

Q. Was the payroll for both locations prepared under your jurisdiction?

A. No, it was not.

Q. Was it prepared at the Bixel store, if you know?

A. It was.

Q. Were there few employees who were paid directly out of Detroit? A. Yes.

Q. Who would they be?

A. They would be top management employees, plus the check signer.

Do you specifically want names?

Q. If you know them, yes.

A. There was Mr. Ferzackerly, Mr. Wilson, Mr. Herndon, Mr. Cliff, myself. I do believe that Mr. Seizer and Mr. Wright. Those last two I am not positive of.

Q. Those were gentlemen that were either managers or had authority to sign checks on behalf of the General Motors Corporation? A. This is true.

Q. What about vacation and leaves of absence? Where they administered—where were they administered? [298]

A. This was all taken care of in the payroll department, which was located at 1076.

Q. For both stores? A. Yes.

Q. How about leaves of absence?

A. That was handled by the payroll personnel department at 1076.

(Testimony of Joseph R. Toombs.)

Q. At vacation time were shop employees or foremen ever transferred from one location to another?

A. This I cannot come definitely with a statement, other than the one case which I just stated a moment ago.

Q. Did one store furnish parts for the other store?

A. There was an exchange of parts between the two stores.

Q. Would the same thing be true of accessories?

A. Yes.

Q. What about overflow work, if any? Was there any overflow work handled by one store for the other?

A. There was an occasional sublet job between the stores.

Q. When you say "sublet", you mean one store would sublet to the other store? A. Right.

Q. We are talking about the stores, either Bixel or Wilshire? A. Yes.

Q. Did General Motors Corporation have a motor vehicle department license? [299]

A. Yes, 350.

Q. That license covered what locations?

A. Both stores.

Q. Both stores? A. Yes.

Q. In connection with the Department of Motor Vehicle license, I believe there is a bond requirement. Would a bond be posted? A. Yes.

Q. Was that bond posted on behalf of both stores, or one bond or two bonds?

A. The two stores were actually started at different times, so I am not too sure when the inception was, January 1 of 1949, I think.

(Testimony of Joseph R. Toombs.)

The Wilshire store somewhere in the neighborhood of January 1 of 1954, I believe.

Q. Was there a common Board of Equalization for the two stores?

A. Yes, the same resale though. There was one return for the two stores.

Trial Examiner: Under what name did General Motors stores operate?

The Witness: General Motors Corporation, Division of Cadillac Motor Car Division of the General Motors Corporation.

Q. (By Mr. Fredricks) I take it that from time to time there were management meetings? [300]

A. Yes.

Q. That would cover the various department heads? Is that correct? A. Right.

Q. Where were those meetings held?

A. Generally, I should say they were held at the Seventh and Bixel store.

Q. I take it that there were sales meetings at times?

A. Yes.

Q. With respect to new cars, where were those sales meetings held?

A. There were individual meetings at each location, but for a contest or a general meeting they were generally held at Seventh and Bixel.

Q. If there was a big sales campaign, or something like that? A. Right.

Q. What about the used car sales meetings? Do you know where they were held?

A. This would be in the same vicinity as the new car operation. Anything of a major importance that

(Testimony of Joseph R. Toombs.)

took to get together the whole group was held at Seventh and Bixel.

Q. At the Bixel store? A. Yes.

Q. Who was the used car manager? Was it Mr. Eby? A. Tom Eby. [301]

Q. Would the used car management cover the lot at 501 Vermont, as well as the Wilshire location and the Bixel location?

A. Yes. I didn't know his title as general used car manager, but he was overseer of the used car operation.

Q. For all three locations? A. Yes.

Q. I believe you told us the invoices were mailed from the Bixel location with respect to accounts receivable?

A. The statement itself was mailed for both locations from 1076.

Q. With respect to medical insurance, life insurance, and so on for the employees, do you know how that was administered?

A. This was all through the payroll and personnel section at 1076.

Q. For both locations? A. Yes.

Q. For all three locations?

A. For all three, and the amount of employees at the Vermont lot was anywhere from four to six employees. That is about the size of it.

Q. I believe you told us, Mr. Toombs, that there were approximately four to six salesmen varying from time to time at Fifth and Vermont location. Was there a Mr. Al McKee? A. Al McKee?

Q. McKay. [302]

A. Right.

(Testimony of Joseph R. Toombs.)

Q. What was his job?

A. He was the man in charge of the Vermont lot as such. I don't know whether he had the title of sales manager or not. I do know he was at one time the used car manager at Seventh and Bixel, and then was placed on the lot when it was opened.

Q. Did you report to Mr. Eby? A. Yes.

Q. So far as the placement of insurance was concerned, on behalf of General Motors, do you know how that was handled?

A. This was done evidently—it was done through the central office, because we received the billings. We were not involved in the placing of the insurance from the branch itself or location. We were merely billed for the insurances.

Q. You used the expression "central office." What is the central office?

A. Central office actually is the General Motors Corporation itself. We got out instructions through the home office, as we call it, which was Cadillac. It is from the central office GM Corporation, home office to us, which was the Cadillac Motor Car Division of Detroit, Michigan. That is where we got our instructions.

Q. The central office is located in Detroit also?

A. Yes, also.

Q. That would include all types of insurance, I would judge? [303]

It that correct? A. Yes.

Q. Workmen's Comp?

A. Workmen's dependents, group insurance. The whole thing was handled there.

(Testimony of Joseph R. Toombs.)

Q. Do you know the names of any of the companies that the General Motors Corporation placed their various insurance programs with?

Mr. Lund: I have an affidavit to submit on all of those.

Mr. Fredricks: I will withdraw the question in the interest of time.

Q. (By Mr. Fredricks) Do you know who was in charge of the employment of attorneys for and on behalf of General Motors Corporation?

A. This was also done from the central office.

Q. What about capital improvements?

A. Any capital improvement had to be approved first through a channel of our home office, which was Cadillac, and also major expenditures I understand went to the corporation in the financial section.

Q. When you say "to the corporation's financial section," I presume you are talking about General Motors Corporation in Detroit? A. Right.

Q. That would be in relation to both stores? [304]

A. Yes.

Q. And the lot, if it included one?

A. But the expenditure was actually offered, I should say, through the comptroller, Mr. Cliff.

Q. He procured it on approval from Detroit?

A. From Detroit.

Q. On May 28 General Motors Corporation terminated the employees at the Bixel location and at the Wilshire location?

Mr. Lund: And the Vermont location.

Q. (By Mr. Fredricks) And the Vermont location. I take it the W-2 forms were prepared for these individuals? A. Yes.

(Testimony of Joseph R. Toombs.)

Q. Were they prepared by you or under your jurisdiction?

A. In the department that I was in, in the administrative department, in the payroll department, yes.

Q. When were these prepared, and where?

A. They were prepared some time in the month of June. I don't recall the exact date they went out, but they were prepared at Seventh and Bixel payroll section.

Q. It covered all employees?

A. Yes, both locations.

Q. When did this go out again, sir?

A. To the best of my knowledge in June. I am not—I am not positive about the date these were actually given to the employees. [305]

Q. This is both the preparation and dissemination?

A. Right.

Q. What about the advertising with respect to new vehicles? Do you know how that was handled?

A. The actual branch did not do new car advertising as such on their own. This was all handled through the factory or through Detroit itself. We had no new car ads that specified whether the location was the Wilshire store or the Seventh and Bixel store. It was a community project, I should say.

Q. What about used car advertising, if you know, with respect to the three locations?

A. The used car ads were placed by Mr. Eby. He was the one that approved all of the bills from the newspapers, and was the individual who dealt with the newspapers, and as such placed ads for used cars for all those locations.

(Testimony of Joseph R. Toombs.)

Mr. Pappy: Was Mr. Hebee the used car manager?

The Witness: Yes.

Mr. Fredericks: Mr. Tom Eby it is, Mr. Pappy.

With respect to used cars—I think we have covered most of this. This lot at Fifth and Vermont, where did that lot receive its cars from, if you know, sir?

The Witness: The cars were shipped there from both locations, both from the Wilshire store and from the Bixel store. They were picked cars, or were designated there by Mr. Eby, which cars would go to the lot. [306]

Q. (By Mr. Fredricks) Was this all used cars at this location? A. This is true.

Q. These cars were traded in by new car customers? A. Yes.

Q. Could there have been some cars that were purchased by Mr. Eby, or somebody under his jurisdiction? A. Yes, there could be.

Q. This was a retail lot, substantially a retail lot?

A. This was all retail. They did not have a wholesale license the last year or so.

Q. If I were a used car salesman at Bixel location, and I had a customer that was interested in a car that we had out at Fifth and Vermont, could I take that customer out there? A. Yes.

Q. Did this happen? A. Yes.

Q. Was it a common occurrence? A. Yes.

Q. Could I have taken a customer to the Wilshire store? A. Yes.

Q. Did this happen? A. Yes.

Q. Did it happen quite frequently?

(Testimony of Joseph R. Toombs.)

A. Yes, it was common inventory in this respect.
[307]

Q. By common inventory you mean what?

A. I mean it was available for anybody who wanted to sell it. It wasn't specifically designated a Wilshire car. It did not have to be sold by a Wilshire salesman or a Vermont salesman or a Seventh and Bixel salesman. It could be sold by anyone.

Q. There is such a thing as a reconditioning of used cars, is there not? A. That is true.

Q. Very briefly for the record, and I think we all know, but would you very briefly state what reconditioning is?

A. The car was taken in and reconditioned for resale on the used car lot.

Q. Repairs made, and so forth? A. Right.

Q. Where was the reconditioning done with respect to used cars?

A. I would say 95 to—well, the majority, over 90 per cent of the reconditioning was done at Seventh and Bixel in the used car shop.

Q. That would be for used cars for all three locations? A. That is true.

Mr. Fredricks: Do we have a stipulation as to the size of the used car lot?

Mr. Lund: No, but we can ask for it.

Mr. Fredricks: It is 196 feet on Vermont, and 156 on Fifth [308] Street. That is our information.

Could we have a stipulation that was in fact the size of the used car lot? We know this of our own knowledge.

Mr. Pappy: Yes.

(Testimony of Joseph R. Toombs.)

Mr. Ansell: The Charging Party stipulates.

Trial Examiner: The stipulation is accepted.

Mr. Fredricks: Thank you.

Q. (By Mr. Fredricks) When you went to work for Thomas Cadillac was the operation of the clerical department different from when General Motors had that location?

A. Yes, there was definitely a reduction of employees.

Trial Examiner: Mr. Lund, are you offering as much of this witness' testimony as has been submitted up to now on behalf of your client?

Mr. Lund: Yes, I felt the effect of the consolidation of the Complaint would be that any testimony concerning the operations of General Motors necessarily applied to both Respondents.

Trial Examiner: Just so the record is clear.

In other words, any evidence that might be submitted by Mr. Fredricks material to your case would apply to it.

Mr. Lund: So far as the operation of General Motors.

Apparently he is going to a new phase.

Trial Examiner: Introduced on your behalf, and vice versa [309]

Mr. Fredricks: Yes, anything that is common. Anything that applies to General Motors in our operation, and anything that is common to both Respondents. Yes, I would be agreeable.

Trial Examiner: Very well.

Go ahead.

(Testimony of Joseph R. Toombs.)

Q. (By Mr. Fredricks) Tell us, sir, how the department was different at Thomas Cadillac than it was under General Motors.

Mr. Pappy: Which department?

Mr. Fredricks: The clerical department.

The Witness: In the accounting section we cut the personnel possibly in half. I think there was approximately 15 or 16 employees directly in the accounting section as we operated under General Motors or under Cadillac, and under Thomas there were seven or eight employees, including myself.

Trial Examiner: Was the nature of their work any different?

The Witness: Well, there was, I should say, an accumulation, or more work was assigned to each individual employee. It was not so—it was more diversified under Cadillac than it was under Thomas.

Trial Examiner: It was the same type of work?

The Witness: Oh, yes. They were doing the same type of operations we had been doing previously.

Q. (By Mr. Fredricks) I think you said it was more diversified under General Motors, or more diversified under Thomas? [310]

A. That is true.

Q. There were multiple duties? A. True.

Q. I think in the reduction in the work force that Thomas Cadillac produced no service accounting, which was for Ehlers Cadillac?

A. This is true.

Q. Or for the Wilshire store?

Thomas Cadillac is a California corporation, is it not? A. Yes.

(Testimony of Joseph R. Toombs.)

Q. Is Thomas Cadillac connected with General Motors in any way, so far as stock ownership is concerned, if you know? A. No, it is not.

Q. Is it connected with Ehlers Cadillac in any manner, so far as ownership is concerned?

A. Not to my knowledge.

Q. Does Thomas Cadillac have a selling agreement with General Motors? A. Yes.

Q. You have seen the selling agreement?

A. Yes, I have.

Q. You are familiar generally with the selling agreements of the General Motors Corporation. Is that selling agreement the same type of selling agreement that the other franchised agreement dealers have throughout the United States? [311]

A. Yes, from what I have seen.

Q. Do you know whether General Motors Corporation has any financial interest in Thomas Cadillac?

A. Not to my knowledge, they don't.

Q. Does Thomas Cadillac have its own used car lot?

A. Yes.

Q. Where is that located, sir?

A. 1046 West Seventh—1041.

Q. Does Thomas Cadillac have any connection with the used car operation of Ehlers Cadillac?

A. Not to my knowledge.

Q. How about the Fifth and Vermont lot?

A. No.

Q. The accounting practices and procedures as well as the credit department, accounts receivable and accounts payable for Thomas Cadillac, where are they administered, if you know?

(Testimony of Joseph R. Toombs.)

A. At 1076 West Seventh.

Q. Is any administration of the accounts payable, accounts receivable or credit department for Ehlers Cadillac conducted at Thomas Cadillac, Inc. or Seventh and Bixel?

A. No, there isn't.

Mr. Lund: Or vice versa?

Q. (By Mr. Fredricks) Or vice versa?

A. No.

Mr. Lund: Thank you. [312]

Mr. Fredricks: That was my next question.

Could we have a short recess?

Trial Examiner: Very well.

Mr. Fredricks: We are just about through, I think, with this witness.

Trial Examiner: We will take a five-minute recess.

(Recess taken.)

Trial Examiner: On the record.

Mr. Lund: I have just a few questions of the witness, and I would like to confine them to the wholesaling.

Q. (By Mr. Lund) Did the Cadillac Motor Car Division do any wholesaling of used cars?

A. You are talking about used cars?

Q. Yes. A. Used cars, yes.

Q. From what location?

A. They were actually out of inventories of all locations.

Q. And that was handled by whom?

A. I would say that the majority of the wholesaling was done by Mr. Eby.

Q. As I understood your previous testimony, the reconditioning of used cars was done at Bixel, or most

(Testimony of Joseph R. Toombs.)

of it, and then they might go to any one of three locations? A. Right.

Q. Thereafter having been sent to one location, was there [313] frequent movement of the cars between the three locations? A. Yes.

Q. Was Roger Ullen the personnel manager?

A. Yes, he was personnel manager and payroll supervisor.

Q. He was in the offices at—

A. Seventh and Bixel.

Q. He had a staff?

A. I think himself and three employees, four employees.

Q. I think your previous answer to this implies but was not expressed, but all payroll checks were issued from where? A. Seventh and Bixel.

Q. For employees of both Bixel and Wilshire?

A. What I say—

Q. Actually handed out?

A. Handed out from there. They were prepared there.

Q. That is true for the Vermont lot also?

A. That is true.

Q. The personnel files for all three locations were kept where? A. Seventh and Bixel.

Q. Where was the new car inventory records kept?

A. All new car inventory cards were kept at Seventh and Bixel.

Q. Where were the personnel files kept for all three locations? [314]

A. At Seventh and Bixel.

Q. All checks for the payment of vendors were—

(Testimony of Joseph R. Toombs.)

A. Prepared at Seventh and Bixel.

Q. There was a stock savings purchase plan for salaried employees, was there not? A. Yes.

Q. For salaried employees at the Wilshire location as well as the Bixel store? A. Yes.

Q. Where was that administered?

A. That was administered at Seventh and Bixel.

Mr. Lund: That is all.

Mr. Fredricks: I have a couple more questions.

Trial Examiner: Very well.

Q. (By Mr. Fredricks) Did General Motors Corporation have any contracts with any sign maintenance company? A. Yes.

Q. Do you know the name of that company, sir?

A. Avon Maintenance.

Trial Examiner: They are a different company from what Mr. Thomas has?

The Witness: We did not have outside maintenance service. Now we are doing our own.

Trial Examiner: Very well.

Q. (By Mr. Fredricks) Did that sign maintenance cover all [315] three locations?

A. Did you say sign maintenance or building maintenance?

Q. Sign maintenance.

A. Sign maintenance was done by the outside concern. I thought you meant building maintenance.

Q. What about General Motors? Did they have a building maintenance contract? A. Yes, we did.

Q. Did that contract cover all three locations?

A. Yes. Two, I should say; not the Vermont lot. They had facilities that the janitor service went into Wilshire and Seventh and Bixel.

(Testimony of Joseph R. Toombs.)

Q. As far as Thomas is concerned, they are doing their own? A. We are doing our own.

Trial Examiner: What classification of employees did Thomas employ for maintenance jobs, not employed by General Motors?

The Witness: Pardon?

Trial Examiner: What job classifications are utilized by Thomas that were not utilized by General Motors in the maintenance establishment?

The Witness: Well, we have janitors themselves that are on the rolls for Thomas that were not there under General Motors.

Trial Examiner: The classification of janitors? [316]

The Witness: Janitor, yes.

Trial Examiner: What?

The Witness: Yes.

Mr. Fredricks: I have no further questions.

Mr. Lund: Can I cover one more thing?

Trial Examiner: Yes.

Q. (By Mr. Lund) You mentioned earlier the fact there were two gentlemen doing building maintenance work, both at Wilshire and Bixel. Were they in the IAM bargaining unit?

A. Mr. Drew was. I do not believe that Gene Burrell was.

Q. His name appears, but it is a little different than on the list. It is Lorenzo Burrell.

Will you perhaps stipulate?

Mr. Pappy: The same person, yes. We so stipulate.

Mr. Ansell: So stipulated.

(Testimony of Joseph R. Toombs.)

Trial Examiner: Do you have any questions, Mr. Pappy?

Mr. Pappy: Yes. [317]

* * * * *

Q. (By Mr. Pappy) Mr. Toombs, you testified that two sets of ledgers were maintained at Bixel, one for each of the stores, Wilshire and the Bixel locations. Is that correct? A. Yes.

Q. Then I would presume that separate accounts receivable ledgers were kept for each location?

A. No, they were not. There was a common pool, and it was all kept in the Seventh and Bixel book accounts receivable.

Q. I believe you testified that separate financial statements were made for both. Were accounts receivable taken into consideration and were allocated for each location for this common ledger?

A. No, but there was a common account between the two stores, interbranch accounts that we have to balance your ledgers.

In other words, all accounts receivable or accounts payable that was designated for a particular store had to be or [319] appear in a common account. This was a branch account.

Q. However, when it came to make up a separate financial statement certain accounts receivable would have to be allocated to one store? A. No.

* * * * *

Q. Just before the layoff of May 28 how many building maintenance employees did General Motors have in its Los Angeles location? A. Two or three.

Q. Including Mr. Drew? A. Yes.

(Testimony of Joseph R. Toombs.)

Q. And where did they spend their time, primarily?

A. Down town.

Q. Bixel?

A. Primarily that was where their office was located.

Q. Where did they spend most of their time?

A. I was never with them, so I can't say where the majority of the time was, but when the necessity arose to go to Wilshire, they went to Wilshire, or at Vermont.

Q. But Wilshire did have a contract to contract our certain maintenance work that was done there?

A. The janitorial service was contracted out. [320]

* * * * *

A. It was made as if it were sublet to another company.

Q. Outside of General Motors? A. Yes.

Q. Who approved, if you know, requests for leaves of absence directed by shop employees?

A. Probably went to the immediate supervisor and then on to the payroll department or the comptroller. The comptroller was the man in charge of the administration.

Trial Examiner: Was there a common supervisor over the two service departments of the two establishments?

A. Not to my knowledge. There was not, other than the general manager.

Trial Examiner: In other words, the supervisor of each supervisory department reported directly to the general manager?

The Witness: Right.

(Testimony of Joseph R. Toombs.)

Trial Examiner: Of the establishment?

The Witness: Yes.

Q. (By Mr. Pappy) Did he not report directly to the manager of each branch?

A. Well, through chain of command it would be this way. It would be the branch manager and then to the general manager.

Q. Mr. Ferzackerly? A. Yes.

Q. Ultimately? A. Right. [324]

Q. What happened to the Vermont lot after May 28, 1965?

A. As far as I know, the operation ceased. It was leased to some other concern.

Q. The real property?

A. Yes. The property was owned by the Pacific Electric, I think.

Trial Examiner: Was Thomas subleased from General Motors?

The Witness: Yes.

Mr. Fredricks: I might clarify that, Mr. Hearing Officer.

I am going to bring that out through Mr. Thomas.

Trial Examiner: Very well.

Any further questions, Mr. Pappy?

Mr. Pappy: I don't think so, Mr. Examiner.

Mr. Ansell: I have one or two.

Mr. Pappy: I have no further questions.

Trial Examiner: Do you have some questions, Mr. Ansell?

Mr. Ansell: Just a couple.

Trial Examiner: Very well, you may inquire.

(Testimony of Joseph R. Toombs.)

Q. (By Mr. Ansell) Do I understand you to say that there was a separate profit and loss statement prepared annually at each of the locations?

A. That is true.

Q. There is a separate balance sheet prepared at each of the locations? A. True. [325]

Q. One of the items on your profit and loss statement would be your accounts receivable, would it not?

A. Yes.

Q. So would there not be a separate accounts receivable figure on the individual profit and loss statement?

A. I tried to explain that to the gentleman here, that all receivables or any transaction between the two stores was handled through an interbranch account.

All transactions, sale of inventories, any expenses or anything that transpired between the two branches went to the branch account, any activities at all.

Q. Would it not be credited to a particular account?

A. Would be all sales. It would be all sales transactions, being they did not have an accounts payable or payroll or any other function of their own, there had to be some transfer vehicle between the two stores, and this was the interbranch account.

We had an intermediate branch account on the Los Angeles books, as well as one on the Wilshire books, which was balanced at the end of each month. Every transaction that went between the two stores went to this account.

Q. In addition to the annual financial statement that we have just gone over, there were more frequent financial statements prepared, say, quarterly or monthly,

(Testimony of Joseph R. Toombs.)

reflecting the condition of each of the two locations? [326]

A. Monthly reports on all phases.

Q. Would that show generally profit, liabilities, assets?

A. No. It would be the sales comparison and the profit per car and the announcement of expenses, accounts.

Q. There would be one of these reports prepared monthly for each of the two locations? Is that correct?

A. Yes, a series of reports.

Q. When an employee wanted to take a vacation, he would check with his immediate superior? Is that right?

A. Yes.

Q. Who would ultimately give him clearance when he could take his vacation?

A. All vacation is scheduled—was cleared through the comptroller's office.

Q. As a practical matter, wouldn't somebody in supervision at each of the two locations confirm the terms of vacations, depending upon the needs of the two particular stores?

A. This was true, but as I say, the initial contact was with the supervisor in charge, then ultimately to the manager of the branch, and then on to the comptroller. But he was the one who gave the dispensation who had priority on it, or if there was any change to be made.

If he saw any fallacy in the makeup of vacations, he was the one who ultimately said this is the vacation schedule. [327]

* * * * *

LaRUE THOMAS

was called as a witness by and on behalf of Respondent Thomas and, having been first duly sworn, was examined and testified as follows:

Trial Examiner: Be seated, please, and give us your name.

The Witness: LaRue C. Thomas.

Trial Examiner: And your address?

The Witness: 6480 Palos Verdes Drive, San Pedro, California.

DIRECT EXAMINATION

Q. (By Mr. Fredricks) Mr. Thomas, what is your business or occupation?

A. Automobile dealer.

Q. Are you connected with Thomas Cadillac, Inc.?

A. I am.

Q. Are you an officer of that company?

A. I am president.

Q. Are you a director of that company?

A. Yes.

Q. Are you also a shareholder in that company?

[332] A. Yes.

Q. Who are the other officers?

A. My brother, Kenneth R. Thomas, is the only other officer.

Q. And is that the office of secretary-treasurer?

A. Yes.

Q. Is he also a director? A. Yes.

Q. And a shareholder? A. Yes.

Q. Have you been in the automobile business for some time?

A. Since June—I have been since June 20, 1932.

(Testimony of LaRue Thomas.)

Q. Have you had franchises with factories prior to the Thomas Cadillac franchise?

A. Yes.

Q. Would you relate some of those franchises, sir?

A. The only other franchise we have had, new car franchise, was with the Studebaker Corporation of America.

Q. When was that?

A. That would have started in 1938 and concluded in 1943.

Q. In 1943 what happened, if anything?

A. In 1943 we were granted the franchise to sell Cadillac, Oldsmobiles, GMC trucks, at San Pedro.

Q. In what name?

A. Cecil L. Thomas and Sons.

Q. Was that a partnership? [333]

A. That was a partnership.

Q. Your father was in that business with you?

A. My father and I were sole owners of the business at that time.

Q. Is Cecil L. Thomas your father?

A. Yes.

Q. Did you subsequently incorporate that business?

A. Yes.

Q. Did that corporation then operate as Cadillac, Oldsmobile, and GMC truck franchise dealer?

A. Yes.

Q. What was the location of that dealership?

A. The location of the dealership for six months was in our old location in San Pedro, at 339 South Pacific Avenue, and later 1020 Pacific Coast Highway, Harbor City.

(Testimony of LaRue Thomas.)

Trial Examiner: What State?

The Witness: California.

Q. (By Mr. Fredricks) Is Harbor City generally in the San Pedro area?

A. Yes, it is like five miles inland from San Pedro, toward Los Angeles.

Q. When did Cecil L. Thomas and Sons, Inc. cease being a General Motors franchise dealer for Cadillac, Oldsmobile, and GMC Truck?

A. I presume it would be May 31, 1965, or June 1, 1965. [334]

I couldn't tell you which.

Q. When did Thomas Cadillac, Inc. commence its business?

A. We began operations of the Cadillac franchise dealer on June 1, 1965.

Q. Was that with respect to sales?

A. That was with respect to sales.

Q. When did you commence your operation with respect to service at Thomas Cadillac, Inc.?

A. On June 7, 1965.

Q. Is there a reason why you terminated your franchise as a Cadillac, Oldsmobile, and GMC franchise dealer in Harbor City, California?

A. Yes, there was.

Q. What was that reason, sir?

A. We were advised that the Cadillac Motor Car Division intended to close the Harbor City point as a sales point, and in its place they offered us the Seventh and Bixel location as a franchised dealer.

Q. In other words, the only franchise that would continue at Harbor City was the Oldsmobile and GMC Truck?

A. Yes.

(Testimony of LaRue Thomas.)

Q. They were closing the point so far as Cadillac cars at that location were concerned? A. Yes.

Q. When you were at Harbor City, and in San Pedro, did you [335] have any relationship with the International Association of Machinists?

A. Yes, we operated under a union contract for many years.

Q. Commencing when, sir?

A. As my memory serves me, we started our association in 1937.

Q. And continued until you discontinued that business? A. Yes.

Q. Did you have any relationship with the Painters at that location also? A. Yes, we did.

Q. What about the Teamsters?

A. We also had an agreement with them.

Q. Were you a member of the San Pedro Dealers Association? A. Yes.

Q. Was the contract with the various unions through the dealership association?

A. The contract was with the dealership association.

Q. Who negotiated those contracts periodically? Was there a committee?

A. A committee was formed, based upon several of the dealers who negotiated these contracts from time to time with the representatives of the International Association of Machinists, the Teamsters, and the Painters and the Paper Hangers organization. [336]

Q. Did you serve on any of those committees?

A. I served frequently.

(Testimony of LaRue Thomas.)

Q. What was your relationship with the unions in respect to the negotiation of contracts?

Mr. Ansell: Excuse me.

Mr. Fredricks: That is kind of a broad question. I will rephrase it.

Q. (By Mr. Fredricks) Could you characterize your relationship with the Machinists and Teamsters and Painters, so far as reaching contracts is concerned during the time that you acted as a committeeman for the Motor Car Dealers Association in San Pedro?

Mr. Ansell: I am going to object on the grounds of relevancy and materiality.

I am willing to stipulate that this gentleman and Cecil L. Thomas enjoyed very fine relations with the unions involved throughout the many years of their dealings.

Trial Examiner: Is that stipulation acceptable?

Mr. Fredricks: Yes, that is pretty much what I was going to say. I would stipulate in the interest of time that is a fact.

Trial Examiner: Do you so stipulate?

Mr. Pappy: Yes.

Trial Examiner: Very well.

The stipulation is accepted. [337]

Q. (By Mr. Fredricks) Did you some time in 1965 personally negotiate with the General Motors Corporation and particularly the Cadillac Motor Car Division thereafter with respect to procuring a franchise for the Seventh and Bixel location? A. Yes.

Q. When did those negotiations commence?

A. As my memory serves me, we were first apprised of the availability of this location in early March, 1965.

(Testimony of LaRue Thomas.)

Q. Did you on or about May 11th reach an agreement with the General Motors Corporation?

A. Yes.

Q. Did you reach an agreement to purchase certain assets of the General Motors Corporation at its Seventh and Bixel location? A. Yes.

Q. Did those negotiations culminate—or did those negotiations eventually culminate in your procuring certain assets from General Motors Corporation?

A. Yes.

Q. Did you become a franchised dealer at Seventh and Bixel location? A. Yes.

Q. Did that happen some time during the month of June, 1965? A. Yes.

Q. You have since that time been operating as an independent [338] franchise Cadillac dealer at that location? A. Yes.

Q. Was the contract that you reached with General Motors Corporation assigned by you to Thomas Cadillac, Inc.? A. Yes.

Q. On or about June 7, 1965? A. Yes.

Q. Did you assume any of the liabilities of General Motors Corporation at its Seventh and Bixel location by that agreement? A. No.

Q. Did you assume any of the liability under the labor agreement that General Motors Corporation may have had with any union at that location?

Mr. Ansell: I am going to object to the question on the grounds it calls for the very conclusion of law that the Trial Examiner and the Labor Board may review and the Court when called upon.

Trial Examiner: I will allow him to answer that question. I don't think it does at all.

(Testimony of LaRue Thomas.)

You are asking the gentleman whether he assumed any. If he says he didn't, he certainly didn't, even though by law he may be required to.

Mr. Ansell: In other words, he didn't expressly—

Trial Examiner: Answer the question [339]

The Witness: No.

Q. (By Mr. Fredricks) Was there some discussion with respect to accounts receivable that the General Motors Corporation had at that location?

A. Yes.

Q. Will you tell us, sir, the history of those discussions.

A. As my memory serves me, the discussion of the purchase of the accounts receivable was one of the last things that was brought to our attention, and after some negotiations an agreement was reached as to evaluation. We did agree to purchase it.

Q. Was this on a basis of accommodations for General Motors Corporation?

A. It was purely on accommodations. We had no interest at all in handling this account.

Trial Examiner: You referred to a labor agreement. When did you first learn about a labor agreement between General Motors and any of its employees?

The Witness: I was apprised by Cadillac that there was a labor agreement in effect at my March meeting. However, I knew many years prior to this there was an agreement arrangement of some kind.

I was also told by Cadillac that there was no succession rights in this agreement. We would not be bound by it.

(Testimony of LaRue Thomas.)

Q. (By Mr. Fredricks) I show you what has been marked [340] Respondent Thomas Exhibit 1 for identification, which purports to be a list of executive department heads and foremen on the payroll of June 30, 1965. Are you familiar with this list?

A. Yes, I am.

Q. Was this prepared under your supervision by somebody in your organization? A. Yes, it was.

Q. Does this list purport to show the various officers, department heads, supervisors, and foremen in your employ as of June 30, 1965? A. It is.

Mr. Fredricks: I will offer this as Respondent's first in order.

Mr. Pappy: May I take the witness on short voir dire?

Trial Examiner: You may.

Mr. Pappy: I think I had better show him the one you showed him.

Mr. Fredricks: This is my copy. There are a number of them over there.

VOIR DIRE EXAMINATION

Q. (By Mr. Pappy) I am showing you Respondent Thomas 1, Mr. Thomas, relative to Mr. Jiron, is that the way you pronounce his name?

A. I don't know.

Q. J-i-r-o-n. He is indicated as foreman for No. 7 and 8. [341] What does that mean?

A. It would mean that he had charge of two floors.

Q. Floors 7 and 8? A. Yes.

Q. That would be a service department?

(Testimony of LaRue Thomas.)

A. This would be sheet metal and trim, trim and paint.

Q. Mr. Holderman, the foreman on the sixth floor, what would he supervise?

A. Heavy duty repairs.

Q. Mr. Dickerson is the foreman of the third floor?

A. New car get-ready.

Q. Mr. Eist is the foreman of the annex?

A. The annex department has to do with quick service, wheels, brakes, rattles, tune-ups, et cetera.

Q. Mr. Mickool?

A. Mickool is foreman of the basement where all new lubrication functions are performed.

Q. Other than parts manager and assistant parts manager, do any of the other employee gentlemen named upon Respondent Thomas' 1 have anything to do with service at Thomas Cadillac?

Mr. Fredricks: Other than whom?

Mr. Pappy: Other than the ones I just listed and went down.

Mr. Fredricks: From Jiron down to Drew?

Mr. Pappy: Yes, other than those. [342]

The Witness: There is an interrelationship between the parts department and the service department, and there could be some function or functions performed by the parts department that would correlate and tie in with the service department.

Q. (By Mr. Pappy) Generally speaking, the general service manager and the service manager would be directly related to service, would they not?

A. Yes.

(Testimony of LaRue Thomas.)

Q. Naturally you as president and secretary-treasurer and the top management would also naturally as a general proposition supervise that generally, would you not? A. Yes.

Mr. Pappy: I have no objection to Respondent's 1.

DIRECT EXAMINATION (Continued)

Q. (By Mr. Fredricks) With respect to Respondent's 1, did any of these employees listed there work for General Motors Corporation, if you know? That is not particularly in the job classifications that they presently have, but primarily the question is were, if any, of them as employees of General Motors Corporation?

A. Were any of the employees on this list that formerly were with General Motors?

Q. Yes, that is the question.

A. Yes, there are some.

Q. Who is the first one? [343]

A. I believe the first man on this list would be Wesley A. Uglow.

Q. Do you know what his job was with General Motors Corporation?

A. It is my understanding he was a used car salesman. Q. He was what?

A. Assistant used car manager.

Q. Anybody else? A. Joseph R. Toombs.

Q. He already testified, and I think he testified he was supervisor of accounting.

He was your business manager? Is that correct?

A. Yes, that is right.

Q. How about Bud Holderman? Did he work for General Motors Corporation, if you know?

A. I understand he did.

(Testimony of LaRue Thomas.)

Q. Was he a foreman?

A. He was a foreman.

Q. How about LaVerne Dickerson?

Trial Examiner: Do you know what his job was as foreman? That is Holderman.

The Witness: I can't tell you. My service manager could tell you.

Trial Examiner: What does he do for you?

The Witness: He is not employed for us now. [344]

Trial Examiner: What did he do?

The Witness: He was foreman of the heavy duty department for Floor 6.

Mr. Fredricks: I understand that was his job at the General Motors Corporation, too.

Mr. Pappy: I will so stipulate.

Trial Examiner: Very well.

The stipulation is accepted.

Q. (By Mr. Fredricks) Mr. Dickerson?

A. I am not aware of what his employment was with the corporation.

Mr. Fredricks: I would be willing to stipulate he was a foreman with General Motors, and a foreman as of this employment.

Trial Examiner: In the service department?

The Witness: New car get-ready.

Mr. Pappy: Did General Motors also have a get-ready department?

The Witness: Yes.

Mr. Pappy: So stipulated.

Q. (By Mr. Fredricks) Other than those four people you now mentioned, did any of the employees

(Testimony of LaRue Thomas.)

of Thomas Cadillac, Inc. work for General Motors Corporation, if you know?

A. Would you restate your question?

Q. Yes. Other than the four gentlemen that we talked about, [345] Uglow, Mr. Toombs, Mr. Holderman, and Mr. Dickerson, did any of the other employees listed on this list—four, eight, 12, 16, 18, 21, if I count them correctly—were they employed by the General Motors Corporation, if you know?

A. It is my understanding that William Eist and Bill Mickool were also employees.

Q. Other than those six, were there any that were employed by General Motors?

A. In the service department?

Q. In any department.

A. Well, Joe Drew and Foreman Bill Eist in the annex department was also an employee.

Q. There would be seven people out of 21, if I count them correctly, that worked for General Motors?

A. Yes.

Q. And of those two of those seven, they have different jobs with you than they had with General Motors? Is that correct? A. Yes.

Trial Examiner: Are you re-offering that Thomas Respondent Exhibit 1?

Mr. Fredricks: I did offer it a minute ago.

Mr. Pappy: I have no objection.

Trial Examiner: Very well.

It is received in evidence. [346]

(The document above referred to, heretofore marked Respondent Thomas Exhibit No. 1, was received in evidence.)

(Testimony of LaRue Thomas.)

Trial Examiner: Do you have any further questions of this witness?

Mr. Fredricks: Yes, I have quite a few.

Mr. Thomas, you have told us you have been in the automobile business for quite a number of years in Southern California.

Are you familiar with the retail sales and service automotive business generally in Southern California?

The Witness: Yes.

Q. (By Mr. Fredricks) Is it true that administratively a dealership is composed of a service department, parts department, a clerical department, and a sales department? A. Yes.

Q. Is your business so administratively set up?

A. It is.

Q. Was Cecil L. Thomas and Sons so administratively set up? A. It was.

Q. Are dealerships generally set up that way in the Southern California area?

A. That is my belief, yes.

Q. Is there an interchange of employees between the parts department and the service department occasionally? [347]

A. There is, upon occasion, an exchange of employees from one department to the other.

We have long felt the need to train employees in all phases of our business, with the idea of bringing them along, so to speak, whereby we can train men from an apprenticeship area to that of management, if they show proper attributes.

Trial Examiner: Could you give us a very short description of what a parts department is, in your establishment, of course?

(Testimony of LaRue Thomas.)

The Witness: A parts department in our establishment is located on the fourth floor and has three functions. They are principally that of delivering parts to the various parts departments on the other floors, where they may be dispensed to the mechanics.

To conduct a retail and wholesale operation from the counter available to the public.

To actively merchandise the sale of Cadillac parts and accessories on a wholesale level to the trade.

Trial Examiner: Do you have parts' employees on the various floors of your establishment who furnish the parts to the mechanics?

The Witness: Yes, we do.

Trial Examiner: Under whose supervision are those parts employees?

The Witness: Under the parts department manager.
[348]

Trial Examiner: Parts department manager.

Were those individuals in the General Motors' union, Mr. Pappy?

Mr. Pappy: No.

Trial Examiner: None of the parts employees were with General Motors?

The Witness: They were not.

Trial Examiner: Is it your contention the parts employees should be included in an appropriate unit?

Mr. Fredricks: Yes, it is, under Austin-Ford, and under Shadoff, W. R. Shadoff and the IAM.

Mr. Lund: That is so on the part of Respondent Ehlers.

Trial Examiner: What is the source of the employees you hire in the parts department?

(Testimony of LaRue Thomas.)

The Witness: We would look to employment agencies, to graduates of high schools and trade centers, word of mouth, and by upgrading garage attendants, car jockeys, or dispatchers from the other departments into and integrate into the parts department.

Trial Examiner: Is the parts job a higher training job than some of the service jobs?

The Witness: No, it is our position the parts department is somewhat different than what would be in the service department. I would have to say the compensation might end up as being about the same, but it wouldn't necessarily have to be [349] the same.

Trial Examiner: Would it be considered a promotion for the individual in the service department to be promoted or to be transferred to the parts department?

The Witness: The two departments are tied in together so completely that there would be no particular distinction or credit given one that was in the parts or in service, because they share equally insofar as the operation is concerned.

Trial Examiner: Very well.

Q. (By Mr. Fredricks) Do you have service writers at your establishment? A. We do.

Q. Are they generally experienced mechanics?

A. It is desirable, highly desirable to have service writers or advisers come through the ranks as mechanics prior to accepting a job as a service writer.

Trial Examiner: Excuse me, Mr. Thomas, before we get away from the parts department employees, but how many employees are there in the parts department?

The Witness: In our establishment?

Trial Examiner: Yes.

(Testimony of LaRue Thomas.)

The Witness: I would have to hazard a guess, but I would say probably 15 to 18.

Trial Examiner: How many service writers do you have?

The Witness: I would have to hazard a guess again, but [350] I believe seven.

Trial Examiner: Other than the service writers and the parts department employees, how many employees are attached to the service department, approximately?

The Witness: I think my service manager could give you a better figure on that, but if I were pressed for an answer, I would say we have—I don't think I can give you a reliable figure.

Trial Examiner: Very well.

Go ahead.

Q. (By Mr. Fredricks) Would you generally describe the duties of a service writer.

A. The service writer's function is to greet the Cadillac owner when he arrives at the service entrance and bring out the customer service file and counsel with him as to what repairs are necessary and needed on the automobile.

His function is to write the work order; secure the customer's signature; determine what the customer would like to do, so far as his needs of transportation which are concerned; to turn this over to the tower for proper distribution of the repair work; and to follow the job through to the completion by checking regularly to be sure that the service dispatcher and tower perform it correctly; and to, if possible, road-test the automobile and check the work on the automobile prior to its submission to the customer. [351]

(Testimony of LaRue Thomas.)

Q. Does he make a diagnosis?

A. Yes, this is one of this prime functions.

Q. Does he counsel with the mechanics?

A. He might.

Q. Does he ever do any repairs himself?

A. Yes, if called on frequently to do small adjustments on the automobile that do not carry a charge to the customer. This is one of the prime differences in our organization over our predecessor.

Q. You also have mechanics in the service department, do you not, that perform the function of mechanical work? A. Yes.

Q. You have a new car get-ready department?

A. This we do.

Q. Do you employ mechanics in there?

A. Yes.

Q. Is the new car get-ready department a training ground of any nature?

A. I don't believe that I could say that they would place a new Cadillac car in the hands of a trainee, any more than we would in other departments. It might be an area where a new employee would work under the jurisdiction and supervision of more qualified men temporarily until he was—until he became more efficient, but it would not necessarily be more so in that department than any other department in our operation. [352]

Q. Do you have a training program for your people in the service department in connection with General Motors?

A. We enjoy the same rights and privileges as all Cadillac dealers do in that we are not only asked, but we

(Testimony of LaRue Thomas.)

are compelled to send all of our employees to service our new automobiles to the General Motors Training Center on Victory Boulevard in Burbank. That is to give our customers the best service that is possible to have on their automobiles.

Trial Examiner: Some time in this proceeding, if it isn't already in evidence, and I don't know if it is all in the exhibits or depositions at this point, but I would like to have a stipulation as to the number of service writers, both at Thomas and at Ehlers, and the number—or a stipulation as to the number of parts employees in Ehlers and Thomas.

I recollect a rule of law that if the union makes a demand to bargain for an inappropriate unit, the Employer is not obligated to recognize a demand and is excused from a refusal to bargain.

I think the number of individuals who may or may not be excluded from the appropriate unit would be material as to whether or not there was a substantial variance.

Go ahead.

Q. (By Mr. Fredricks) Do the employees in your service department all enjoy substantially the same training benefits, and I will go through them individually, so far as vacations [353] are concerned, for instance? A. Yes.

Q. What about holidays? Do they all enjoy substantially the same number of paid holidays?

A. Yes.

Q. What about your group insurance program?

A. Yes.

(Testimony of LaRue Thomas.)

Q. What about your uniform allowance or uniform furnishings? A. Yes.

Q. What about discount on parts, if the employees in the service department including the parts department and so forth, wanted to purchase parts? Do you have a discount privilege for those people?

A. Yes.

Q. What about discount on labor? Do you have such a discount for them? A. Yes.

Q. What about the discount on vehicles, if they do buy vehicles, from you? A. Yes.

Q. Do you within the service department transfer people from one job classification to another, depending upon the acquisition of the skills?

A. Skills? Yes.

Q. Do the people in the parts department occasionally [354] disassemble units to get component parts for vehicles, if necessary? A. Yes.

Q. Do they, by the same token, assemble individual parts to make a unit, if necessary? A. Yes.

Q. Do you have body mechanics? A. Yes.

Are they commonly known as metal men in your industry? A. Yes.

Q. What do they do? What is their function?

A. The function of the sheet metal men in our industry would be an individual who was capable of disassembling a wreck job; straightening all damaged parts or replacing all damaged parts; re-assembling the automobile to a point where it is ready for the paint shop.

Q. Do they do electrical work in the reassembly?

A. The do.

(Testimony of LaRue Thomas.)

Q. What about hydraulic systems?

A. They do.

Q. Brake systems? A. They do.

Q. Things of that nature?

Do you have pickup and delivery people?

A. We do. [355]

Q. Do they ever perform emergency service on the road for your customers? A. They do.

Q. Do they ever perform mechanical service probably of a minor nature for your customers?

A. Of a very minor nature, yes.

Q. Are those employees sometimes transferred to the parts department or to the new car department or some other departments?

A. To the service department, yes.

Q. Depending again upon the acquisition of skills, I take it? A. Yes.

Q. Your premises are located at 1076 West Seventh Street, are they not, sir? A. Yes.

Q. That is an eight-story building with a basement? A. Yes.

Q. Immediately to the south or east of you you have an annex, or what has been characterized as an annex?

A. Yes.

Q. What does that consist of, the annex, so to speak?

A. The annex is an area consisting of a number of stalls whereby we do all quick service work, such as squeaks, rattles, brakes, tune-ups, electrical repairs, et cetera.

Q. Is this a one-story open building? [356]

A. Patio-type construction.

(Testimony of LaRue Thomas.)

Q. Do you have a used car lot?

A. We have a used car lot located across the street.

Q. How many used car lots do you have?

A. One.

Q. Do you have anything to do with the used car lot at Fifth and Vermont? A. No.

Q. At the 5151 Wilshire Boulevard, the used car lot? A. No.

Q. Going back to your building, as part of your negotiations with General Motors Corporation, did you, sir, enter a lease with respect to the building?

A. We did.

Q. Who is your landlord?

A. Cadillac Motor Car Division.

Q. General Motors Corporation? A. Yes, sir.

Q. Do you know how old that building is?

A. I understand it was built in the early twenties.

Q. Do you have an opinion as to whether that building is an adequate building for a modern Cadillac dealership?

Mr. Pappy: Objection. It calls for an opinion, and it is immaterial and irrelevant.

Mr. Fredricks: This man has been qualified. He has been [357] a dealer of some years.

Trial Examiner: I will allow the answer.

The Witness: The building we are located in is probably the poorest excuse for an automobile dealership facility that I have ever seen.

We have a very short lease on the property, and it is our desire as well as the desire of the Cadillac Motor Car Division that we seek other quarters.

(Testimony of LaRue Thomas.)

This building was never intended to be an automobile dealership. It was designed to be a furniture manufacturing center, and as a result of its construction, which I understand is called a loft-type building, it becomes nearly impossible to operate a dealership effectively and economically.

We have been and are currently negotiating for new facilities.

Mr. Pappy: I object, and I renew my objection, and I request that his answer be stricken totally. It is immaterial to any issue in this case.

Mr. Ansell: The Charging Party joins in the objection.

Trial Examiner: The objection is overruled.

Q. (By Mr. Fredricks) You mentioned you had a short time term on this lease. What is your term on this lease?

Mr. Pappy: Objection. It is in evidence. The lease agreement is part of one of the exhibits.

Mr. Fredricks: It is in evidence, and it is an exhibit. [358]

Trial Examiner: Very well.

Mr. Fredricks: It is a two-year lease.

You also have a sublease on the premises across the street for the used car lot? A. We do.

Mr. Fredricks: I would merely call the Trial Examiner's attention to the fact that also is in evidence.

Mr. Lund: Is that from GM?

Mr. Fredricks: GM is not the landlord, but it is a sublease from GM.

Q. (By Mr. Fredricks) Do you have a leasing company, Mr. Thomas? A. We do.

(Testimony of LaRue Thomas.)

Q. What is the name of your leasing company?

A. T & T Leasing.

Q. That means Tom & Tom, I take it?

A. Yes.

Q. You and your brother own that company, do you?

A. We do.

Q. Is that a separate corporation? A. It is.

Q. And is that corporation housed at 1076 West Seventh Street? A. It is.

Q. The same as is your dealership? [359]

A. Yes.

Q. Are you leasing vehicles through that company? A. Yes.

Q. Does General Motors lease any vehicles through the Seventh and Bixel store, if you know?

A. Not that I was aware of.

Q. You purchase all of your automobiles from the General Motors Corporation, do you not?

A. Cadillac Motor Car Division.

Q. Where is that plant located, if you know?

A. Detroit, Michigan.

Trial Examiner: Would your testimony be any different than that of Mr. Ehlers on the same subject?

A. The Witness: No.

Trial Examiner: He said yes.

Let's not go into the same things that Mr. Ehlers testified about.

Mr. Fredricks: Anything that would apply to both, I will not go into.

Trial Examiner: Very well.

I don't think there is any controversy about Mr. Ehlers' testimony in those respects.

(Testimony of LaRue Thomas.)

Q. (By Mr. Fredricks) Did General Motors Corporation ever request you to terminate any General Motors' employees in connection with the purchase of the assets that you purchased from General Motors?

A. No.

Q. Did they ever ask you to notify any of their employees that they would no longer be employees of General Motors? A. No.

Q. Did they ever ask you to participate in any manner with any training benefits that have been showed by the General Motors to their employees?

A. No.

Q. With relation to pensions or vacations or pay or anything of that nature? A. No.

Trial Examiner: Did you establish any policy with respect to the hiring of employees at the time you opened?

The Witness: We have been an automobile dealer for many years, sir, and the policy that we had in our Harbor City operations was perpetuated yearly by the same department heads in the same manner as we operated there.

Trial Examiner: What was that policy with respect to the hiring of employees?

The Witness: What was the policy?

Trial Examiner: With respect to hiring of employees.

The Witness: You mean in the service department?

Trial Examiner: Yes.

The Witness: My service manager could give you a better [361] definition of this than I can. However, from my level, I would say we sought out the

(Testimony of LaRue Thomas.)

best qualified men we could find for whatever department the man was to be employed in.

Trial Examiner: Did you do the selecting?

The Witness: No.

Trial Examiner: Very well.

Q. (By Mr. Fredricks) Was the selecting done by Mr. Coats?

A. The selection and employment of all people in the service department was done by Mr. Coats or by his assistant.

Q. You delegated that duty?

A. I delegated that.

Q. Do you know, sir, during the month of June how many former employees in the service department of GM were employed?

I am prepared with a stipulation on this, if we can get together, to save time, because I do have the figures.

Mr. Pappy: What was the question?

Mr. Fredricks: How many former GM employees were employed by Thomas Cadillac.

Mr. Pappy: It is already in evidence.

Mr. Lund: A list of them.

Mr. Pappy: By way of stipulation and the list.

Mr. Fredricks: We have the names, but we don't have the names identified, I don't think. There were 75 people on that list.

I am prepared to stipulate. [362]

Mr. Pappy: It is tying the group up.

Mr. Lund: May I offer an exhibit at this point?

Mr. Fredricks: It is the total.

Mr. Pappy: Mr. Examiner, I presume you can count. The trouble with this is, there might be some discrepancy between the actual list and the numbers.

(Testimony of LaRue Thomas.)

Trial Examiner: Are the lists all accurate lists?

Mr. Pappy: That is what we stipulated.

Trial Examiner: Let it rest. In your briefs you can draw the inferences from the evidence together and advise the Trial Examiner how many there were.

Mr. Pappy: Yes, sir.

Trial Examiner: Let's proceed.

Mr. Fredricks: The only thing we don't have, I think, is the number, the total number of employees that were employed in the service department by Cadillac Motor Car Division.

So far as Thomas is concerned, there is in evidence one of the exhibits, but we do not have the total number of employees from that list that we hired.

Trial Examiner: Why don't you state the number, and if that isn't correct, then some time during the writing of the briefs it can be brought to somebody's attention?

Mr. Fredricks: My information is the number of former GM employees employed by Thomas Cadillac during June of 1965 was 16. [363]

Trial Examiner: Sixteen?

Mr. Fredricks: Sixteen.

Trial Examiner: Very well.

Mr. Pappy: I will accept that as a stipulation, provided that the best evidence would be the list by comparison.

Trial Examiner: Very well.

We understand that. Let's proceed.

Do you have any further questions of this witness?

Mr. Fredricks: Yes, I do have.

(Testimony of LaRue Thomas.)

Trial Examiner: Do you know how these 16 employees were selected?

The Witness: No.

Q. (By Mr. Fredricks) Mr. Coats selected those?

A. He did.

Q. Or his assistant? A. Yes.

Q. Did you acquire any patents or personnel files or seniority lists from General Motors Corporation in connection with the purchase of these assets?

A. No.

Q. Did you acquire any official minutes of any negotiations or minutes of meetings? A. No.

Q. Or correspondence with respect to negotiating meetings? A. No. [364]

Q. Have you conducted a program to develop a service business at your organization?

A. We have.

Q. Would you briefly describe that program, sir.

A. In order to develop a list of owners we contacted a firm in Long Beach that by a computer system has available all the automobile dealers and the list of the various makes of cars.

Trial Examiner: Did you go through the same type of thing as Mr. Ehlers did?

The Witness: Yes.

Trial Examiner: Proceed from there.

Q. (By Mr. Fredricks) Did General Motors have such a program, if you know?

A. Not to my knowledge.

Q. Did you purchase new signs, the same as Mr. Ehlers? A. Yes.

Q. New stationery, and so forth? A. Yes.

(Testimony of LaRue Thomas.)

Q. As far as your franchise with General Motors, did you have any duties, liabilities, or privileges with respect to General Motors that no other Cadillac franchise dealer has? A. No.

Q. Did General Motors ever make a demand upon you to assume the contract with the union that General Motors might have had? A. No. [365]

Q. You acquired no assets of General Motors Corporation located on Wilshire Boulevard? Is that correct? A. That is correct.

Q. You acquired no assets of General Motors located at the lot at Fifth and Vermont in connection with the purchase of assets from the General Motors?

A. No.

Trial Examiner: Mr. Thomas, did a union, any union, make a demand upon you for recognition at any time?

The Witness: We received several letters in late May and early June.

Trial Examiner: Are those letters in evidence?

Mr. Pappy: Yes.

Trial Examiner: Very well.

Did any of your employees ever bring to your attention as individuals they wanted to be represented by the union?

The Witness: Never.

Trial Examiner: Very well.

Q. (By Mr. Fredricks) When you received the letters from the union, particularly the letters from Mr. Geffner, dated May 17, and Mr. Geffner dated May 18, and Mr. Ansell and from Geffner dated June 8,

(Testimony of LaRue Thomas.)

and a letter from Mr. Geffner dated June the 9th what did you do with those letters?

The Witness: Those letters were turned over to our labor consultant, Mr. Al Heinz. [366]

Q. (By Mr. Fredricks) Did he advise you you had no responsibility to answer those letters?

A. He did so advise.

Trial Examiner: I take it you acted on his advice?

The Witness: Correct.

Trial Examiner: Very well.

Q. (By Mr. Fredricks) Getting back to your business at Bixel, did you have to procure a new dealer's license for that location?

A. In establishing ourselves as an automobile dealer?

Mr. Ansell: The Charging Party is willing to stipulate the same licenses were procured as by Respondent Ehlers, and were required to be procured by this Respondent.

Mr. Pappy: If there are any differences, we can go into those.

Trial Examiner: Is that agreeable with you?

Mr. Fredricks: That is agreeable with me, and I am familiar with the licensing provisions. I think all licenses would apply to Thomas Cadillac, Inc. in all respects. The same licenses would be required as asked of GM.

I don't know if the same amount of bonds would be required for the Board of Equalization, but it would be a Board of Equalization. I understand the bond was \$10,000.

Trial Examiner: Very well.

(Testimony of LaRue Thomas.)

The stipulation will be accepted. [367]

Mr. Fredricks: May we have a stipulation we made deposits with the Water Company and the utility companies?

Mr. Pappy: Stipulated.

Trial Examiner: The stipulation is received.

Mr. Fredricks: And with respect to unemployment insurance rates?

Trial Examiner: Hearing no objection, that stipulation is accepted.

Mr. Fredricks: May we have a stipulation with respect to the disability insurance?

Mr. Ansell: I think we stipulated on this.

Trial Examiner: Hearing no objection, we will accept that stipulation.

Mr. Fredricks: May we have the same stipulation with respect to workmen's compensation?

Mr. Ansell: So stipulated.

Trial Examiner: Hearing no objection, the stipulation is accepted.

Mr. Lund: I don't know whether you stipulated to this: I might propose my stipulation. We checked during the noon hour for determining the rate for workmen's compensation policy at Lou Ehlers Cadillac. They took into account his experience back in Milwaukee in determining the rate, and not any General Motors' experience.

If counsel can stipulate to that, I will be over that [368] hurdle.

Mr. Ansell: I will stipulate.

Mr. Pappy: I will so stipulate.

Trial Examiner: The stipulation is accepted.

(Testimony of LaRue Thomas.)

Q. (By Mr. Fredricks) Do you know how your workmen's compensation rates were arrived at?

A. I do not.

Q. Do you know how many franchise dealers there are in the so-called metropolitan zone?

Trial Examiner: Are there any more than appears on the telephone exhibits?

Mr. Fredricks: We have that.

Mr. Lund: Are there any more than that?

Mr. Fredricks: I think there are 17.

Mr. Pappy: We will stipulate to that fact.

Trial Examiner: I thought they were all in evidence. Go ahead.

Q. (By Mr. Fredricks) Do you sell cars on conditional sales contracts? A. We do.

Q. And with what financial institution do you finance those?

A. Our cars are through United California Bank, and the bulk of our business time payment installment loans are through the United California Bank.

Trial Examiner: Off the record. [369]

(Discussion off the record.)

Trial Examiner: On the record.

Let's take a five-minute recess.

(Recess taken.)

Trial Examiner: On the record.

Mr. Fredricks.

Mr. Fredricks: Thank you.

Q. (By Mr. Fredricks) Mr. Thomas, I asked you with whom you placed your conditional sales contract, and I believe you told us United California Bank.

(Testimony of LaRue Thomas.)

I don't remember whether I asked if you know where General Motors placed their conditional sales contracts.

A. I wouldn't know.

Q. You do most of your banking with United California Bank? A. Yes, we do.

Mr. Fredricks: Can we have a stipulation the same as Ehlers with respect to the various services that we may have contracted for as being independent of any that General Motors had contracted for, such as the typewriter service and neon signs, and so forth?

Mr. Ansell: Were they all in fact?

Mr. Fredricks: And City Linen.

Mr. Ansell: Were they all different?

Q. (By Mr. Fredricks) Mr. Thomas, when you started your business at Seventh and Bixel did you take over any contracts [370] of General Motors that they had with any linen company or any office machines repair contracts? A. No contracts of any nature.

Q. You entered into contracts on your own without relationship to what General Motors had done?

A. Correct.

Trial Examiner: Had any of the individuals who had contracts with General Motors insisted you take over their contracts?

The Witness: We were given a pretty good romancing by several.

Q. (By Mr. Fredricks) Did they insist?

A. Oh, no.

Trial Examiner: They tried?

The Witness: These contracts were all terminated by GM as of May 31, and many organizations attempted to have us continue on, but we did not.

(Testimony of LaRue Thomas.)

Trial Examiner: You selected your own?

The Witness: This is true.

Q. (By Mr. Fredricks) Do you know whether your hourly-rated employees are any different than what General Motors had, if you know?

A. I don't know what General Motors paid their people prior to our coming in. I know what our rate is.

Q. You established your own rates? [371]

A. We did.

Q. Is there a reason why you established your own rates, rather than assuming someone else's?

Mr. Ansell: I object on the grounds it is irrelevant.

Mr. Fredricks: We had the same thing with Ehlers.

I don't care if it gets in.

Trial Examiner: Very well.

You may withdraw the question.

Mr. Fredricks: I don't care if it gets in.

Q. (By Mr. Fredricks) At the time you started Thomas Cadillac and entered into business in June of 1965 did you have any doubt as to whether the union represented a majority of the employees?

A. I had sincere misgivings on their part, because everyone that had—I had any conversation with, was so warm and friendly toward us, and all employees that we hired had no hesitancy in crossing the picket lines, and as a result of that I just felt we had an organization that was interested in Thomas, and not beholden to any other organization for employment.

Q. Did any of the employees request that you meet with any unions or talk to any unions?

(Testimony of LaRue Thomas.)

A. No. No one ever came to us and asked us to meet with an organization.

We did have several employees come to us and ask us for [372] their consideration in their employment, and thank the foreman for the way in which we treated them.

Q. Did the union at any time call on you and request that you hire union employees or any employees that have been members of this union? A. No.

Q. Were the employees hired on the basis of their ability, if you know?

A. This was the policy that we established for our departments to employ people with.

Q. You established a broad policy, I take it?

A. This is true, correct.

Q. What is that policy, sir? What was that policy?

A. Our policy in the employment of people in the organization is to hire the best qualified people, irrespective of race, creed or color—best qualified—and of course this would have to do with the aptitude and the personalities, and that sort of thing.

Q. How about the physical ability of a person? Is that important?

A. Yes, we felt—are you saying a person's capability? This would be very important. Their personal physical condition is important.

Q. Did you have a pre-employment physical examination?

A. We do that. We supply every prospective employee with [373] an opportunity to have a physical,

(Testimony of LaRue Thomas.)

and the results of which are made known to him as well as to us.

Q. Did any union ever request that you submit to an election? A. Never.

Q. Did any union ever file a petition for an election against Thomas Cadillac or in connection with Thomas Cadillac?

A. Not that I am aware of.

Q. You have never received anything from the National Labor Relations Board? A. No, sir.

Q. If a majority of your employees had wanted a union, would you have granted their wish, do you think?

A. Yes.

Mr. Pappy: Objection.

Trial Examiner: I will let the answer stand.

Q. (By Mr. Fredricks) Do you know whether your reputation with respect to your personnel policies when you were in business in Harbor City was known by any of the employees at Seventh and Bixel?

Mr. Ansell: Object.

Q. (By Mr. Fredricks) If you know.

Mr. Pappy: It is immaterial whether he knew.

Trial Examiner: I think it is pertinent, if he knows.

We are dealing with an area of good faith now. I assume this Employer could have heard from an employee what a good [374] employer he was. That employee might think he didn't need a union, and the Employer would think the employee didn't think he needed a union.

Mr. Pappy: It has very small weight.

Trial Examiner: We are dealing with a matter of subjective good faith here.

(Testimony of LaRue Thomas.)

Go ahead, you may answer.

The Witness: In answer to your question, I am told our reputation was very good in the treatment of our employees in our former dealership, and that this information was made available or became available to prospective employees in our organization.

Q. (By Mr. Fredricks) Did some of the employees that you employed in Harbor City come with you to the Seventh and Bixel location?

A. Many of them did, yes.

Q. Have you had any indication from any of your present employees that they desire a union?

A. No, on the contrary, I continually hear of their comments the fact they are completely happy with the manner in which we conduct our business affairs.

Mr. Fredricks: Could we have a stipulation with respect to the same thing that Mr. Ehlers testified to on what he objected to the contract, or do you want me to go through this piecemeal and cover both stores, and the grievance committee [375] was made up of personnel from both stores, and seniority would apply to both stores?

That is, the seniority or the transfer to a GM plant with a dealership and so forth. Could we have a stipulation that Mr. Thomas' testimony would be the same as Mr. Ehlers with respect to that?

Mr. Ansell: That he would believe the contract would not be totally applicable to his operation for those reasons?

Mr. Fredricks: Yes, that is correct.

Mr. Ansell: I will stipulate he would testify.

Mr. Pappy: I will object to his testimony, but I will stipulate to it.

(Testimony of LaRue Thomas.)

Trial Examiner: Very well.

The stipulation is accepted.

Mr. Fredricks: I have no further questions of this witness.

Trial Examiner: Do you have any questions, Mr. Lund?

Mr. Lund: I have none.

Trial Examiner: Mr. Pappy?

Mr. Pappy: Yes.

CROSS-EXAMINATION

Q. (By Mr. Pappy) Mr. Thomas, on what basis are your parts department employees paid?

A. They are paid on a salary basis.

Q. Have they so been paid since you began the operation of [376] the parts department?

A. Yes.

Q. And on what basis are your service writers paid, and have they been paid?

A. This can best be answered by my service manager.

Q. Do you know?

A. It is my understanding they are paid on a salary and commission basis.

Q. Your mechanics, on what basis are they paid?

A. They are paid on a flat hourly basis.

Q. Do you recall how many parts department employees you had on the first day that you began operations at Seventh and Bixel? A. No.

Q. Do you know approximately how many?

Trial Examiner: Wouldn't that be revealed in the exhibits?

(Testimony of LaRue Thomas.)

Mr. Pappy: A stipulation, yes. No, it would not for the parts department employees.

Trial Examiner: The employment of each one of the employees was stated.

Mr. Pappy: In one of the depositions there was a statement on that.

Trial Examiner: Let's proceed.

Q. (By Mr. Pappy) During the course of the employment of [377] the parts department employees has it ever occurred that a mechanic, for instance, was working as a mechanic one week and was transferred into the parts department and did parts work for a day or a week, and then went back to a mechanic again, and so forth? A. This would not happen.

Q. You testified there are three primary functions of the parts department at Thomas Cadillac. Do you know if those were the three primary functions of the parts department at GM? A. No.

Q. They were not, or you do not know?

A. I do not know.

Q. Is it not a fact that mechanics, if they work in a normal work week, make more money than the parts department employees, other than the supervisory department employees?

A. A mechanic is a highly skilled man. His services will demand a larger compensation or better compensation than will a parts department employee.

Q. That is true at Thomas Cadillac?

A. Yes.

Mr. Fredricks: I will stipulate it is true in the automotive industry in Southern California. I have made surveys of this.

(Testimony of LaRue Thomas.)

Q. (By Mr. Pappy) Do you know whether service writers at [378] GM did any minor repairs on automobiles as part of their duties? A. Just by hearsay.

Q. What was that hearsay? A. Negative.

Q. Do parts writers have desks at Thomas Cadillac or something on which to write?

Mr. Fredricks: I don't understand the question.

Q. (By Mr. Pappy) Did the service writers at Thomas Cadillac have either a desk or what would pass as a desk? A. Yes.

Q. Do they spend much of their time at those desks?

A. A service writer would spend only that part of his work day at the desk that would be required in writing the completion of the paper work.

Q. What is that, approximate time?

A. I couldn't tell you.

Q. Could you give me an approximation?

A. The service manager might.

Q. At any time after you received the first letter from the unions concerning your taking over at Seventh and Bixel, did you contact or confer with the union with a view to determining whether or not they were in fact represented by a majority of your employees? A. No.

Q. Did you enter the building at Seventh and Bixel at any [379] time prior to June 1, 1965?

A. Yes.

Q. Did you spend any part of that time in the service areas of the building? A. No.

Q. You did not go into this area at all?

A. I think I was given a tour through the building by one of the employees. So far as my memory serves me, I wasn't at any time in the service area.

(Testimony of LaRue Thomas.)

Q. During that tour did you observe sufficiently the service department employees to determine that they were engaged in the service of new and used Cadillacs automobiles?

A. I suppose so.

Q. You so observed? A. Yes.

Q. When you entered upon your business at Seventh and Bixel, did the employees that you employed in those service areas at Seventh and Bixel engage in the service of new and used Cadillac automobiles?

A. Would you mind repeating the question?

A. After you began business on June 1st—

A. Seventh.

Q. On June 7th with respect to the service department, did the employees that you employed in the service areas perform service on new and used Cadillac automobiles? [380] A. Yes.

Trial Examiner: Mr. Thomas, what does the painter in your establishment do?

The Witness: Automobile painters in our establishment occupy the eighth floor, and they are engaged in the preparation of painting and the detailing of damage areas, or areas requiring refinishing or spotting.

Trial Examiner: Is this the spray type painting?

The Witness: Yes, it is.

Trial Examiner: All of the employees who are engaged in that type of work are designated as painters?

The Witness: Yes, sir.

Trial Examiner: Are there any painter helpers?

The Witness: It would be my opinion that we do

(Testimony of LaRue Thomas.)

not have any painter helpers. However, my service manager can tell you accurately.

Trial Examiner: I take it if someone bumps your car, you have a sheetmetal workman who pounds out the bump?

The Witness: First of all, they would go to the collision estimate or a report would be made as to what the cost of the repairs would be.

If its work was authorized and the report order made and signed by the customer, the customer is taken to the seventh floor where the sheetmetal work would be corrected by a sheetmetal man. [381]

It would then be taken to the eighth floor where it would be sanded, primed and sanded again, and the color applied.

After the color has dried enough, it would be buffed out and polished and then returned to the customer parking area for the customer.

Trial Examiner: How much in connection with that work would the painter do?

The Witness: That is the use of the spray gun and the sanding.

Trial Examiner: Does he do the sanding?

The Witness: He does all that work. I do not think—I would have to have this verified, but I don't think we have any sanders on the premises. They are all full-time painters.

Trial Examiner: All full-time painters?

The Witness: Yes.

Trial Examiner: Very well.

Do you have any further questions, Mr. Pappy?

Mr. Pappy: No further questions.

(Testimony of LaRue Thomas.)

Trial Examiner: Mr. Ansell?

Mr. Fredricks: He has one.

Q. (By Mr. Ansell) Where does Thomas Cadillac purchase its parts and accessories that are needed for the service and maintenance?

A. Cadillac Motor Car Division.

Q. You get them directly from the Detroit distribution point? [382]

A. This is a local parts depot.

Q. Do you know where that is located?

A. It is located on Jefferson, near LaBrea,—La-Cienega.

Mr. Ansell: No further questions.

Trial Examiner: Any further questions?

Mr. Fredricks: I have two.

REDIRECT EXAMINATION

Q. (By Mr. Fredricks) You were asked about the desks, Mr. Thomas, that the service writers use. Is that a metal standup type desk? A. Yes.

Q. They use clipboards in connection with writing up these orders, I take it? A. Yes.

Mr. Fredricks: I have no further questions.

* * * * *

LLOYD E. COATS

was called as a witness by and on behalf of Respondent Thomas and, having been first duly sworn, was examined and testified as follows:

Trial Examiner: Be seated, please, and give us your full name.

The Witness: Lloyd Ernest Coats.

(Testimony of Lloyd E. Coats.)

Trial Examiner: Your address.

The Witness: 5081 Tripoli Avenue, Los Alamitos, California. [384]

DIRECT EXAMINATION

Q. (By Mr. Fredricks) Mr. Coats, what is your business or occupation?

A. I am general service manager for Thomas Cadillac, Inc.

Q. Have you been so employed since on or about June 1, 1965? A. Yes.

Q. Prior to that time were you employed by Cecil L. Thomas and Sons, Inc.? A. Yes.

Q. Cadillac, Oldsmobile, GMC Truck, Harbor City, California dealer? A. Yes, sir.

Q. For how long were you employed by Cecil L. Thomas and Sons? A. January of 1960.

Q. How long have you been a service manager or general service manager?

A. I believe 10 or 12 years.

Q. Prior to that time, sir, were you engaged in the automotive industry in some capacity or other?

A. Yes.

Q. What was that capacity?

A. I started as an apprentice mechanic, became a mechanic, service salesman, assistant service manager, a field representative for Cadillac distributorship, and then service manager. [385]

Trial Examiner: Is that the formal progression in the automotive industry or the automotive repair industry?

(Testimony of Lloyd E. Coats.)

The Witness: It would be the ideal one to give a good background of the automotive service business.

Q. (By Mr. Fredricks) How long, sir, have you been in the automotive industry all together?

A. Approximately 20 years.

Q. During that time have you had an opportunity to observe mechanics in various automobile dealerships? A. Yes, I have.

Q. You have had an opportunity to observe their skills and their aptitudes? A. Yes.

Q. Have you had an opportunity to observe how rapidly they adjust or learn technological improvements? A. Yes.

Q. Have you attended various schools yourself?

A. Yes.

Q. Have you attended any schools conducted by General Motors Corporation? A. Yes.

Q. Briefly, what are some of those schools you have attended?

A. Air conditioning, new car—every year we have to attend the new car school, warranty applications.

Trial Examiner: Would the parties consider this individual [386] as an expert in this field?

Mr. Fredricks: We would so stipulate, and two other questions will establish it, I am sure.

Trial Examiner: Is there any doubt that he has been in the business for 10 years?

Mr. Pappy: I will stipulate that he is an expert service manager.

Trial Examiner: Very well.

Let's proceed from there.

(Testimony of Lloyd E. Coats.)

Q. (By Mr. Fredricks) Did you interview any of the employees that are now working for Thomas Cadillac, Inc. at Seventh and Bixel? A. Yes, sir.

Q. With respect to employment, did you interview mechanics? A. Yes.

Q. Painters? A. Yes.

Q. Service writers? A. Yes.

Q. Parts department people? A. No.

Q. Would that be handled by the parts manager?

A. Yes.

Q. What about some of the other job classifications, such as car jockeys or garage attendants? [387]

A. Yes.

Trial Examiner: Service writers?

The Witness: Yes, I did.

Q. (By Mr. Fredricks) In those interviews, what quality, if any, were you looking for?

A. Experience, the mental outlook of the man on his job.

Trial Examiner: Excuse me a minute.

We will take a five-minute recess.

(Recess taken.)

Trial Examiner: On the record.

Will you read back Mr. Coats' answer, so he can proceed.

Mr. Fredricks: May we have the question, too?

Trial Examiner: Read the question.

(Record read.)

The Witness: His age. That is about it.

Q. (By Mr. Fredricks) Did the question of unionism come up at all in any of those interviews?

A. No.

(Testimony of Lloyd E. Coats.)

Q. Was the issue of unionism a factor in any manner whatsoever in your mind as to whether you were going to hire anybody or not?

A. No, not whatsoever.

Trial Examiner: Do you recollect some of the employees you interviewed had worked for General Motors?

The Witness: Oh, yes, many. [388]

Trial Examiner: Did you have interviews with them also?

The Witness: Yes.

Q. (By Mr. Fredricks) Did you have interviews with all of them?

A. Yes, all that were connected with the service department.

Trial Examiner: Did any of those employees mention the union to you during those interviews?

The Witness: No.

Q. (By Mr. Fredricks) Did you also interview other people? A. Yes, I did.

Q. How did you procure those people, or how did they happen to come in for interview?

A. Some of them had worked for Bill Hinman, who was a service manager at a Pontiac dealership, and he had recommended these people very highly.

Q. Hinman became your assistant, did he not?

A. Yes, he did.

Word of mouth, employment agencies, several of the trade schools in Los Angeles.

Q. Subsequent to those interviews have you made a calculation or count, I should say, pursuant to my request relative to the number of employees who for-

(Testimony of Lloyd E. Coats.)

merly worked for General Motors Corporation in the service department that you hired?

A. Yes, I have.

Q. How many people is that? [389]

A. Sixteen.

Q. Do you know how many employees you had in the service department in June of 1965, approximately?

A. Fifty-five to—

Q. Excluding your foremen and managers and yourself.

A. Around 50 to 60.

Q. I think it was about 63, if I remember correctly.

Would that figure be in the ball park, do you think?

A. I think it would.

Trial Examiner: Mr. Coats, you interviewed the employees who formerly worked for GM. Did you tell them immediately after the interview whether you intended to hire them, or whether you did not?

The Witness: No, sir, I didn't. I didn't have the time.

Trial Examiner: When were they advised they were hired?

The Witness: Between June 1st and June 3rd.

Trial Examiner: How was that done?

The Witness: By telephone.

Q. (By Mr. Fredricks) Your service department was closed down from June 1 to June 7, was it not?

A. Yes.

Q. That is when you used the time to interview people and get set up and so forth?

A. We used most of the time to try and clean the place up. We did interview a few people at that time.

[390]

(Testimony of Lloyd E. Coats.)

Q. And the people that subsequently went to work for you on June 7, and would this be a fair statement, they were all interviewed between June 1 and June 7, or June 3, I think you said?

A. Between approximately May 27, 28, and June the 7th.

Q. Now do you have a method of handling customer complaints at your place? A. Yes, we do.

Q. You also have a method of handling customers when they come in? A. Yes, we do.

Q. Did this method differ any from the General Motors, the way they operated, if you know?

A. We made a few changes in the routing of the work through the building. We have tried to maintain a very cordial feeling toward the customers, which was lacking, I believe, from what customers have told me.

They seemed to have the impression now, and this is what we want, and we are glad to see them come in. Beforehand this impression was not there.

Trial Examiner: Mr. Coats, I would like to get back to the interview, if I may, for just one second.

Did all of the General Motors, former General Motors' employees come in for interviews?

The Witness: all of the ones from Seventh and Bixel.

Q. (By Mr. Fredricks) How were they notified of the [391] interviews?

A. They were handed an application and asked to fill it out and to return it, and then we called them down and interviewed them.

Trial Examiner: This is while they were still working for General Motors?

(Testimony of Lloyd E. Coats.)

The Witness: Approximately the last three days that they were working for General Motors.

Trial Examiner: You interviewed them all?

The Witness: Yes.

Trial Examiner: Did you do that personally?

The Witness: Yes, sir.

Trial Examiner: Very well.

Mr. Pappy: At Seventh and Bixel?

The Witness: Yes, sir.

Q. (By Mr. Fredricks) Did you have your own method?

Trial Examiner: Let me ask you one further question.

Did you interview all of those employees before you started interviewing other employees?

The Witness: No, sir.

Trial Examiner: You were interviewing other employees at the same time?

The Witness: Yes, sir.

Trial Examiner: Very well.

Q. (By Mr. Fredricks) Did you handle the meetings with your [392] service writers as to instructions on how to handle customers and so forth?

Do you personally handle that? A. I do.

Q. Do you handle the service department meetings yourself? A. Yes, I do.

Q. It is your opinion it is important that you have quality work in your service department, so far as sales are concerned, new car sales? A. Very much so.

Q. Have you been so instructed by Mr. Thomas or somebody in supervision?

(Testimony of Lloyd E. Coats.)

A. I have been instructed that in the 20 years I have been in the service.

Q. Have you had any promotions in the service department at Thomas Cadillac?

A. Yes, we have had several.

Q. Would you enumerate some of those, please, sir.

A. Phil Hayes, who was the shop foreman in the annex, has been promoted to service manager. Bill Hinman left to take a job with a Pontiac dealership.

Q. Bill Hinman was your assistant?

A. He was.

Q. Is he now your assistant?

A. He is now my assistant, and he is service manager. [393]

A mechanic by the name of Gary Brinkman has been promoted to shop foreman on the third floor.

A car jockey, L. C. Smith, has been promoted to service salesman.

Q. (By Mr. Fredricks) Has it been your experience in your years in the automotive industry there are promotions within the ranks in the service department of dealerships?

Do you understand? I will rephrase the question.

Based upon your experience in the automotive industry, have you observed with respect to promotions in the service department of the retail sales and service automotive industry there are promotions within the ranks from one job to another? A. Yes.

Trial Examiner: Has it been your experience, or what has been your experience with respect to filling the job of service salesman?

(Testimony of Lloyd E. Coats.)

The Witness: I don't understand. What quality?

Trial Examiner: What sources does that individual ordinarily come from? Is it from other employees in the service department, or do you hire them from the street?

Where do you ordinarily get the service salesmen?

The Witness: Generally it has been our policy or my policy all my time, if at all possible, to bring them from the organization that you are working with.

Trial Examiner: Very well. [394]

Q. (By Mr. Fredricks) You mean promote a mechanic?

A. From a mechanic up, yes.

Mr. Fredricks: I have no further questions of this witness.

Trial Examiner: Any questions, Mr. Pappy?

Mr. Pappy: Yes, just a couple for clarification.

CROSS-EXAMINATION

Q. (By Mr. Pappy) When you mentioned there were 63 employees, did you include among those the service writers and the parts men?

A. Not the parts men.

Q. You did include the service writers?

A. I think or believe they are included.

Mr. Fredricks: I think I mentioned that figure, and I think the service writers are included, yes.

Q. (By Mr. Pappy) How many service writers did you have on the 7th of June, 1965?

A. As near as I can recall we had seven or eight.

Q. Do you know how many General Motors had?

A. No, I don't.

(Testimony of Lloyd E. Coats.)

Q. Where did these service writers come from?

A. Some of them were ex-employees, ex-service salesmen at Cadillac Motor Car Division. Some of them—two of them we brought from Harbor City store. Some of them were brought by Bill Hinman or recommended by Bill Hinman. He had worked with [395] some of them.

Trial Examiner: Do you know how many parts employees you had on this date?

The Witness: No, it is not in my department.

Trial Examiner: Very well.

Q. (By Mr. Pappy) You do not supervise the parts employees? A. No, I do not.

Q. The parts manager reports directly to someone other than you? A. Yes, he does.

Q. To whom does he report, if you know?

A. I would imagine to Eugene, Estep, E-s-t-e-p, the general manager.

Q. On what floor was the paint department at General Motors at Bixel? A. Eighth floor.

Q. What floor is it on at Thomas?

A. Eighth floor.

Q. Was there any work in process that you found on the floor on June 7 when you began servicing cars that were at GM? A. Not that I can recall.

Q. They had cleaned house entirely?

A. They had finished repairing.

Q. Finished repairing? A. Yes. [396]

Mr. Pappy: No further questions.

Mr. Ansell: Just a couple.

Q. (By Mr. Ansell) Didn't you interview some GM employees prior to May 28, 1965?

(Testimony of Lloyd E. Coats.)

A. I believe I did in the service salesroom.

Q. In what? A. Service salesmen.

Q. Service salesmen? A. Yes.

Q. How about the service and maintenance employees, like mechanics and so forth?

A. No, sir.

Q. It is your testimony all of that category of persons were interviewed on or after May 28?

A. Approximately that date. It is hard to remember.

Q. Do I understand that the interviews were conducted in your office right on the premises?

A. On the premises, yes.

Q. Throughout the course of the day of May 28, which was the last day that they were working as GM employees, you would have them come into your office?

Mr. Fredricks: I don't think he restricted it to May 28 in his testimony:

Mr. Ansell: I am just talking about that particular day.

On that particular day, May 28, did you spend the day [397] interviewing various service and maintenance employees, or part of the day, anyway?

A. I think part of the day we did.

Q. Did you request the persons to come to your office? A. Yes.

Q. Do you maintain an office on the premises?

A. I do now. I didn't at that time. I was using the service manager's office. I was using different desks around the building.

Q. Is it your testimony that you interviewed some of the GM service and maintenance employees subsequent to May 28?

(Testimony of Lloyd E. Coats.)

A. It might have been the 27th. I attempted to interview all of them at an early time.

Q. Before they were terminated by GM?

A. Before they were terminated.

Q. Were you successful in doing that?

A. No, sir, I was not.

Q. Those you did not interview by the close of the business of May 28, how did you conduct the interviews thereafter?

A. We interviewed everybody at the Seventh and Bixel Street location by the 28th.

Q. These interviews were conducted during the course of the day? Is that right? A. Yes.

Q. While they were on the payroll of GM? [398]

A. Yes.

Q. You did in fact interview the entire service and maintenance staff by the close of business of May 28?

Mr. Fredricks: Service and maintenance or service department personnel.

Mr. Ansell: Yes, service department personnel.

A. Yes.

Q. (By Mr. Ansell) I understood you to say you were generally looking for people with experience, with a good mental outlook on their job, and you would consider their age as a factor. Is that correct?

A. Yes.

Q. In addition to that you were looking for persons whom you considered to be honest? A. Yes.

Q. Loyal to the company? A. Yes.

Q. Persons whom you would consider to be sober individuals? A. Yes.

(Testimony of Lloyd E. Coats.)

Q. With a good mechanical background?

A. Yes.

Q. Is it a fact that of the GM employees that you interviewed there were two people that were disqualified because of age?

A. As near as I can recollect, there were two 64-year-olds.

Q. Other than these two individuals who were disqualified [399] because of age, did you interview any persons whose loyalty to the company you doubted?

A. No.

Q. Did you interview any persons whom you felt were not sober individuals? A. No.

Q. Or any persons whom you felt lacked a good background on Cadillac automobiles? A. Yes.

Q. Is it a fact that you concluded from your interviews that the GM mechanics that you interviewed had all at one time or another gone through the Cadillac training school?

A. It wasn't even asked.

Q. You didn't ask that question? A. No.

Q. In fact they had all gone to the Cadillac school?

A. This I assumed. I don't know that any dealership they did not attend.

Q. Do you know of any specific factor, other than the cases of these two persons of advanced age that disqualified GM employees from employment with Thomas Cadillac? I am talking now about service and maintenance.

Mr. Fredricks: May I have the question read, please?

Mr. Ansell: Would you read it.

(Testimony of Lloyd E. Coats.)

Mr. Fredricks: I didn't understand it, or I didn't hear [400] it all.

(Record read.)

Mr. Ansell: Let me withdraw that, and I will ask this:

Q. (By Mr. Ansell) In your own mind, after conducting these interviews with the GM service and maintenance employees, with the exception of the old people, did you disqualify or made a decision not to offer employment to any persons with Thomas Cadillac because of any specific factor that in your mind disqualified them from working for Mr. Thomas?

A. There were many that in my opinion were not qualified to work for Thomas Cadillac. And I can remember one young fellow. I can't recall his name. It was stipulated that he could not come to work for at least a month because of an extended motorcycle trip he wished to take.

Q. Outside of that one man, who had this motorcycle problem that would tie him up for a month and the two men that were too old in your judgment, was there any other specific factor that disqualified other persons from being invited to work for Thomas Cadillac, Inc.?

Mr. Fredricks: What do you mean by "specific factor"?

Trial Examiner: Are you going into the same things that were covered in the deposition?

Mr. Ansell: It was covered in the deposition; this is true.

Trial Examiner: Let's not repeat what is in the [401] deposition.

(Testimony of Lloyd E. Coats.)

Mr. Ansell: All right.

When you said a little earlier there was a change in the method of routing vehicles, do you recall that testimony? A. Yes.

Q. Did you mean that under Thomas Cadillac, Inc. the service salesmen write up the repair order and then the car was sent to the tower and then from the tower the vehicle is routed to a particular mechanic?

A. Yes.

Q. Whereas under GM, the service salesman would write up the order and then designate the mechanic who was going to do the work himself?

A. Right.

Mr. Ansell: No further questions.

Q. (By Mr. Pappy) What is a tower?

A. It is a control tower. All of the orders—I am talking orders—that are written—say your car. A copy of that order is sent to the control tower, and a record of your name, your license plate number, the promised time the car goes out, is kept there.

Q. Is there such a term as a tower attendant, or tower operator? A. Yes.

Mr. Fredricks: Also known as dispatcher. [402]

Q. (By Mr. Pappy) Under Thomas Cadillac the service writer would deal directly with the tower man?

A. Yes.

Q. Rather than directly with the mechanic?

A. No, he didn't do—

Q. At GM?

A. No, he did not specify which mechanic would go on it. He designated what floor, or designated what floor he wanted the car sent to.

(Testimony of Lloyd E. Coats.)

Q. To the tower operator? A. Yes.

Q. I have one further question.

This may be in evidence, but isn't it a fact that before you interviewed the employees you did not consult with either of the unions, the Painters Union or the IAM, with respect to either the availability or the qualifications when you interviewed them? Is that a fact?

A. No, I did not consult with any member of the union.

Q. Union officials? A. No.

Trial Examiner: Any union official approach you and inquire of you in this respect?

The Witness: No, sir.

Mr. Pappy: No further questions.

Mr. Ansell: No questions. [403]

REDIRECT EXAMINATION

Q. (By Mr. Fredricks) I would like to clarify one point, if I may.

You were asked about the eighth floor and whether painting was done for Thomas Cadillac on the eighth floor, and I think your testimony was yes.

You were asked if the painting was done by the General Motors Corporation on the eighth floor, and I think your answer was yes.

I would like to clarify that. Is the painting equipment physically located on the eighth floor?

A. Oh, yes.

Q. The spray booths are equipped with ventilation?

A. Yes, it has to be. You have the smog license and all the other licenses for the paint booths that specify the eighth floor only.

Mr. Fredricks: I have no further questions.

Trial Examiner: Mr. Coats, you are excused. [404]

* * * * *

Mr. Fredricks: General Motors dealers?

Mr. Lund: General Motors facilities, corporation facilities.

Mr. Fredricks: All right.

Mr. Pappy: What telephone book?

Mr. Lund: June of 1965.

As Respondent Ehlers Exhibit 9, a document headed "Cadillac Motor Car Division, Los Angeles Retail Branch" of May, 1965, with "Number of Employees," and it needs a separate explanation.

(The document above referred to was marked Respondent Ehlers Exhibit No. 9 for identification.)

Mr. Lund: The total listed here is the information which I acquired just a few days ago from Mr. Cherpelis, C-h-e-r-p-e-l-i-s, on the legal staff of General Motors in Detroit, of the total number of employees employed in the Los Angeles Retail Branch, which would include Bixel, Wilshire, and the Vermont lot broken down into four categories: shop unit employees in the bargaining unit, new car salesmen, used car salesmen, [406] and then all other employees; although I have it listed as "office, supervision, et cetera."

That means all other employees.

Mr. Pappy: Which shop?

Mr. Lund: This is the total for all of them.

Mr. Pappy: Which shop unit? Is it the Painters?

Mr. Lund: As far as we are concerned, there is only one unit; this is it.

Mr. Pappy: The contract unit?

Mr. Lund: The contract unit.

Mr. Pappy: The unit you say is appropriate?

Mr. Lund: The unit they were operating with and under as of May 28.

Then also with the information given is the number of each of those four categories of employees that were employed at the Wilshire address in May of 1965.

Trial Examiner: Very well.

Mr. Lund: To clarify one other matter, the listing for the shop unit employees, and as I understand the figure there are 117 total number of employees that General Motors considered were in their bargaining unit under the General Motors contract in their relationship with both unions.

Wilshire includes the same categories and group of employees that were under the General Motors' contract as of May of 1965 at the Wilshire location. [407]

Trial Examiner: I take it the difference between 117 and 42 would be the employees assigned to the Thomas location.

Mr. Fredricks: So far as the shop unit employees, that number is 75, which is consistent with another exhibit.

However, I would like to make one comment, so far as the used car salesman and office supervision.

The net difference between the total and the number at Wilshire does not necessarily mean the ones that were at the Bixel store; although most of them were. But it would also include the lot at Fifth and Vermont.

Mr. Lund: That is correct.

Trial Examiner: Very well.

Mr. Fredricks: With that understanding, I would acquiesce for this exhibit going in as a stipulation.

Mr. Lund: As Respondent Ehlers Exhibit 10, we offer excerpts from an agreement, and this happens to be an agreement of June 15, 1962 by and between the San Pedro-Wilmington Motor Car Dealers Association and District Lodge 94 of the Machinists Union and the Painters Union, Local Union 1798, which agreement was to be effective to June 15, 1965.

This is the agreement Mr. LaRue Thomas testified about the San Pedro area Motor Car Dealers Association.

(The document above referred to was marked Respondent Ehlers Exhibit No. 10 for identification.) [408]

* * * * *

Mr. Pappy: Yes, I object on the grounds of materiality.

I would like to know why a statement of the assets and the number of employees and the number of cars sold and the net cars of General Motors is material to this situation.

Trial Examiner: I assume the Respondent will argue there can't be a successor to a corporation as large as General Motors.

Mr. Lund: That is the point.

Trial Examiner: By an Employer as small as the Respondent.

Mr. Pappy: I will object.

Trial Examiner: The objection is overruled.

Mr. Ansell: We will object, too.

(The document above referred to, heretofore marked Respondent Ehlers No. 7, was received in evidence.)

Mr. Pappy: No objection to 8.

Trial Examiner: Very well.

Exhibit 8 is admitted.

(The document above referred to, heretofore marked Respondent Ehlers Exhibit No. 8, was received in evidence.)

Trial Examiner: How about 9?

Mr. Pappy: No objection.

Mr. Ansell: No objection. [417]

Trial Examiner: No. 9 is admitted.

(The document above referred to, heretofore marked Respondent Ehlers Exhibit No. 9, was received in evidence.)

Trial Examiner: How about 10?

Mr. Ansell: We object to the receipt of this document on the grounds it is irrelevant and immaterial to any issue in this case.

That is the fact whether or not this union entered into other contracts with other employees containing or not containing the assignors' and successors' clauses.

Trial Examiner: I will assume one of the arguments that the General Counsel has is that the contract operation of law is binding upon the Respondents.

I assume related to that might be the question as to whether or not the contract doesn't have a successorship clause is binding or doesn't have is binding by operation of law.

I think there is a possibility that this might be material, and I will admit.

Mr. Ansell: All right.

(The document above referred to, heretofore marked Respondent Ehlers Exhibit No. 10, was received in evidence.)

Mr. Ansell: I just wonder if we could also put another matter before this tribunal? [418]

* * * * *

ERVING C. GRAHAM

was called as a witness by and on behalf of the Respondent Ehlers and, having been first duly sworn, was examined and testified as follows:

Trial Examiner: Be seated. State your name.

The Witness: Erving Charles Graham.

Trial Examiner: Your address?

The Witness: 11420 Hemlock, El Monte, California.

DIRECT EXAMINATION

Q. (By Mr. Lund) The Erving is spelled with an "E"? A. Yes, spelled with an "E."

Mr. Lund: Mr. Examiner, this witness' affidavit and the deposition are both in evidence. Therefore, I will attempt to avoid touching any of the ground covered thereby, but I should say at the outset those documents disclose he worked for Cadillac Motor Car Division for years.

He worked first at Bixel, and later at Wilshire. He was the shop foreman under Cadillac Motor Car Division for many years, and then he was hired by Lou Ehlers Cadillac as its [428] service manager. He was an employee of Lou Ehlers Cadillac, who hired the service employees. [429]

* * * * *

Q. Does Lou Ehlers Cadillac use any guard service?

A. No, they don't.

Q. Does Lou Ehlers subcontract some of its body work? A. Yes, they do.

Q. To whom?

A. The name slips me right now.

Q. Is it Denny? A. Denny Larson.

Q. Automotive? [430] A. Yes.

(Testimony of Erving C. Graham.)

Q. Did General Motors subcontract their body work? A. No, they didn't.

Q. Under General Motors used cars were taken in trade at the Wilshire. Were they reconditioned for the purposes of resale?

A. Not the Wilshire branch. They were all reconditioned at the Seventh Street branch.

Q. Reconditioned, but at the Seventh Street branch?

A. Yes.

Trial Examiner: Were they then transferred from one branch over to the other Wilshire branch after they had been reconditioned?

The Witness: That is right, sir.

Q. (By Mr. Lund) Were some of them transferred to the Vermont lot, or did they stay at Bixel?

A. They were separated out between the three lots, actually.

Q. The reconditioned cars at the Wilshire branch that were originally taken in were the cars that they got after the reconditioning?

A. Not at all times. [431]

* * * * *

Q. (By Mr. Lund) After a car has been reconditioned, and it appeared on the Wilshire lot for purposes of sale as a used car, were such cars on the Wilshire used car lot from time to time moved from there to Bixel, or some of them?

A. Yes, they were. If they stayed on the lot over a period of a week or two weeks, sometimes they were moved to the Vermont lot or the Seventh Street lot for faster selling.

(Testimony of Erving C. Graham.)

Q. In that movement of cars, did that require the use of a car attendant who was in the bargaining unit?

A. Yes, it did.

Q. Are you aware that there were some used cars held for sale, either at the Vermont lot or down at Bixel that were at least on occasion moved to the Wilshire lot?

A. That is right.

Q. That involved the use of a car attendant?

A. That is right.

* * * * *

Q. (By Mr. Lund) Do you know any of the new cars held for [432] sale at Bixel were from time to time moved to Wilshire?

A. I can best state that they weren't actually moved. They did have me list what new cars were available at both branches, and they so sold them, and if the salesmen had a particularly equipped car that one of his owners had, he could buy it through the Seventh Street branch or vice versa.

Q. Are you aware that from time to time a salesman from Wilshire might actually take a customer down to the Bixel showroom?

A. That is right.

Q. A salesman from Bixel might take a customer to the Wilshire showroom?

A. Yes.

Q. Was this something that happened infrequently, regularly, or frequently?

A. It happened quite often.

Q. In case the Wilshire shop on a particular day happened to be overloaded, were cars moved to the Bixel shop for servicing?

A. Yes, they were.

Q. And was the reverse true, that the Bixel shop was overloaded, the cars might be moved to the Wilshire shop?

A. Yes, it was.

(Testimony of Erving C. Graham.)

Q. This involved the use of car attendants?

A. That is right.

Q. Was this a frequent or a rare occurrence? [433]

A. It was quite frequent.

Q. I think you have told me once that the Wilshire shop was considered the ninth floor of the Bixel location. Do you want to explain that?

A. Actually the Wilshire is a sub-branch, and it is actually considered as the ninth floor of the Seventh Street branch.

All mechanical numbers at the Wilshire started with nine. They ended with eight at Seventh Street, and started with nine at the Wilshire branch.

Q. What are these mechanical numbers you refer to? A. That is the clock number.

Q. The employee clock number? A. Yes.

Q. Would anybody occasionally obtain needed parts from the Bixel shop? A. Quite often.

Q. Did that happen the other way around?

A. Quite often, yes.

Q. In the case of vacations or other long absences for illness or other reasons, under Cadillac did Bixel often send replacements for supervisors or foremen for such individuals?

A. Yes, this happened quite often.

Q. Did this happen with reference to shop employees who were out over vacation or for long illnesses? A. Yes. [434]

Q. Out at Wilshire under the General Motors was there any personnel department or staff?

A. No, there wasn't.

(Testimony of Erving C. Graham.)

Q. Were there occasions when you were with General Motors on Wilshire that supervision wanted to fire an employee, which was satisfactory and agreeable to the manager, Mr. Herndon?

A. There were occasions when we did want to, but we never could follow through with it.

* * * * *

Q. (By Mr. Lund) Did you mean by the previous answer the question of discharge had to be referred to the Bixel branch?

A. That is correct.

Q. The Bixel management ever allow or approve the firing of any employee at Wilshire?

A. To my present knowledge, no.

Q. Were you aware prior to June 1 that a number of the General Motors Cadillac Motor Car Division salaried and hourly [435] employees were being retired as of June 1 under the GM pension plan?

A. Yes, I was.

Trial Examiner: How did you know about them?

The Witness: Through a meeting, through several gentlemen that came up through the factory. They had a meeting with supervisors at the Seventh Street branch, and between—and they did inform us that there would be a considerable amount of new retirees automatically.

* * * * *

Q. (By Mr. Lund) Prior to June 1, did you have occasion to mention to Mr. Lou Ehlers that a number of the Wilshire employees of Cadillac, both salaried and hourly, were going to be retired under the GM pension plan?

A. Yes.

(Testimony of Erving C. Graham.)

Q. Were you still aware, sir, prior to June 1 that a number of the Bixel employees of GM, both salaried and hourly, were going to be retired on June 1?

A. Yes.

Q. Were you aware also that GM was retiring employees between the ages of 55 and 60?

A. Yes. [436]

* * * * *

Trial Examiner: I would think the General Counsel would be willing to agree Ehlers and Thomas operated as two independent establishments without change of employees or exchange of business.

Mr. Lund: I will get on with it. I knew it was not controversial.

Mr. Fredricks: May we have that in the form of a stipulation?

Mr. Pappy: Yes, you may.

Mr. Ansell: Charging Party will so stipulate.

Trial Examiner: The stipulation is received. [437]

Q. (By Mr. Lund) Under Cadillac Motor Car Division how often were the shop employees paid?

A. Once a week.

Q. Under Lou Ehlers?

A. Biweekly.

Q. Under Lou Ehlers do mechanics occasionally work in the shop on Saturday?

A. Yes, they do.

Q. This has been true since last June?

A. Yes.

Q. Did they under Cadillac? A. No.

Q. Were there many occasions under Cadillac when a shop employee would work beyond 4:30?

(Testimony of Erving C. Graham.)

A. There was some occasions, but not many of them.

Q. Since June have there been many occasions under Ehlers where a shop employee worked beyond 4:30?

A. Yes, there is.

Q. How were the hours of work of the salesmen and office employees under Lou Ehlers Cadillac? Were they the same as those of the salesmen and office employees under the Cadillac Motor Car Division?

A. No.

Q. Is the practice of Lou Ehlers relative to furnishing uniforms to shop employees the same as that Cadillac had? [438]

A. No, it isn't. [439]

* * * * *

Q. (By Mr. Lund) Is the practice of Lou Ehlers relative to parking allowances for shop employees, if any, the same as that under Cadillac Motor Car Division?

A. No.

Q. Did GM have a stock purchase plan for salaried employees?

A. Yes, they did.

Q. Does Lou Ehlers?

A. No.

Q. Do the service advisers of Lou Ehlers Cadillac make minor adjustments to customers' cars?

A. Yes, they did.

Q. Did they under General Motors?

A. Very rarely.

Q. By that answer, what do you mean?

I will ask this question: Under Lou Ehlers is this frequent, or a very rare occasion?

A. It is a frequent occasion.

* * * * *

(Testimony of Erving C. Graham.)

Q. (By Mr. Lund) As I understand from Mr. Ehlers' testimony, [440] the service writers wrote up the repair order.

Does that repair order go to the mechanic that actually does the work? A. Yes, it does.

Q. Is there ever an occasion when the mechanic and the service advisers ever have to communicate at least relative to the interpretation of that repair order?

A. Quite often there is.

Q. Are there other occasions when they have to communicate with each other?

A. There are other occasions, yes.

Trial Examiner: Were the service writers covered by the General Motors' contract?

The Witness: No, they weren't.

Q. (By Mr. Lund) What does the dispatcher do?

A. He controls the amount of work to be taken in during the day, and also controls what floor it is to go to.

Q. What do you mean, he controls what floor it is to go to?

A. He knows the different mechanics throughout the building and each one of the several different types of jobs they can do.

He knows by his board which ones can actually handle that job within the time that he sets for that job to be done.

Q. Does he then determine which stall or which mechanic cars should go, to which floor? [441]

A. On the first floor of the Wilshire branch, he determines which stall it goes to. On the second floor he just determines it goes up there.

(Testimony of Erving C. Graham.)

Q. You referred to a board. I take it he keeps a board running account, so to speak, of how many cars he has got on the first floor and which stalls and how many cars on the second floor. Is that right?

A. Yes, that is it.

Q. He knows where there might be an overload?

A. That is right.

Q. He knows where there is availability for more work?

A. That is right.

Q. Is he under the service manager?

A. Yes, he is.

Q. Does he need any mechanical background for this job?

A. He actually doesn't need it, but he acquires it, if he is a new trainee, and it is a big help. He must know certain parts of the cars to give a direct and promised time of a certain job to go out.

Q. What are the parts clerks' duties?

A. Their duties are to issue out parts to mechanics and to receive parts from mechanics that are actually defective on a warranty part, and write a defective tag on them and the reason for failure.

Q. Does the mechanic come to the parts clerk for the parts [442] that he needs?

A. Yes, he does.

Q. Are there occasions when the parts clerk delivers the parts to the mechanic on the floor?

A. There are those occasions of that, yes.

Q. Does the parts clerk ever have any occasions to assemble or disassemble a unit?

A. He does when the parts department is out of parts, and they know they have a new part in a unit. and they will take this part out of the unit and give it

(Testimony of Erving C. Graham.)

to a mechanic and reorder it and reassemble this unit to get it back in stock.

Q. When they get it from the factory, you say they reassemble it?

A. Yes, that is right.

Q. Aside from the mechanic picking up the part from the parts clerk or the parts clerk delivering the parts to the mechanic, do any other contacts happen between the mechanic and the parts clerk on work where they are working with each other?

A. Yes, where there is a part to be ordered that has no part number listed. There are a certain amount of parts that are not listed parts.

In other words, they are a part that as a rule does not wear out. So sometimes the parts men have actually to go over to the car and see what this man actually needs on that car and write up the description of where that part goes. [443]

Then he sends it into the factory.

Q. This is going into the area of the shop where the mechanic is going to work on the car?

A. That is right.

Q. Does the service manager have any authority over the parts manager?

A. Indirectly, yes.

Q. How do you mean by that?

A. Well, he could hire a parts man, or if any problems come up that the parts manager cannot settle, he can intervene and settle.

Q. The painters, to which some reference has been made, are they craft building painters, or strictly automotive painters?

(Testimony of Erving C. Graham.)

A. Strictly automotive.

Q. That is spray-painting? A. Yes, sir.

Q. Where do they work in the Lou Ehlers shop?

A. They work in the southeast corner of the second floor. [444]

* * * * *

Q. (By Mr. Lund) Who works in the area immediately around each side of the painters?

A. The metal men.

* * * * *

Q. (By Mr. Lund) Do these metal men work on both sides, [446] or are they on one side of the painters? A. They work one side.

Q. Who, if anybody, works on the other three sides? A. New car get-ready service.

Q. Maybe they work in the corner, and you don't have anybody on the other side.

Is that work performed by a mechanic?

A. Yes.

Q. Who, if anybody, works on the car immediately before it goes to the painter for painting?

A. That would be the body-and-fender metal man.

Q. When the painters finish the car, who, if anybody, does it go to?

A. When the painter finishes?

Q. Yes.

A. Generally it goes to the wash rack to be washed.

Q. How about the matter of the chrome and so on?

Is that usually on when the painter paints the car?

A. Not at all times, no.

Q. If that isn't on, where does it go from there?

A. Then it goes back to the metal man.

(Testimony of Erving C. Graham.)

Q. Is this a very rare occasion when it goes back to the metal man?

A. No. I would say the majority of the time after the damaged collision it invariably goes back to the metal man for [447] moldings or chrome.

Q. Is there any respect in which the painters and the metal men have to work together or co-ordinate their work between themselves?

A. Yes, they must at all times work together. Sometimes, maybe, a metal man could slip up and leave a little dig too deep, or a wave in a panel, and if the painter goes ahead and sprays over it without saying anything to the metal man, it goes out as a bad job. They must work together at all times.

Q. Does the foreman who supervises the painters also supervise other shop mechanics? A. Yes.

Q. Was that true under GM?

A. You asked me a twofold question.

Under GM, yes.

Q. Under GM was it true that the foreman who supervised the painters also supervised other shop employees? A. Yes, mechanics. [448]

* * * * *

Q. In other words, on these collision jobs, and I take it [449] that the bulk of the painters' jobs are the collision jobs? A. Yes.

Q. The bulk of the metal man's work also?

A. Yes.

Q. Their method of compensation with Lou Ehlers?

A. Is the same.

Q. As far as the painters and the metal men are concerned? A. That is right.

(Testimony of Erving C. Graham.)

Q. Under Cadillac with the IAM Machinists Union, was there a shop steward? A. Yes, there was.

Q. What was his name?

A. Barney Burrell. And during the last it was Pete Falchi.

Q. Pete Falchi? A. Yes.

Q. Would he from time to time bring up grievances to the supervision? A. Yes.

Q. Did he also bring up grievances to the supervision on behalf of the painters? A. Yes.

Q. Did the service advisers, the dispatcher, the parts clerks, and the shop mechanics and the painters under Lou Ehlers have all of the same holiday schedules?

A. Yes, they did. [450]

Q. The same vacation plan? A. Yes.

Q. Same group insurance plan? A. Yes.

Q. You have explained about the hours.

Are there lockers for these employees?

A. Yes, there was.

Q. Do all of the service advisers, the dispatcher, parts clerks, painters, and the shop mechanics have lockers in the same area? A. Yes, they do.

Q. Does this include the shop foreman?

A. Yes.

Q. These people that you mentioned that they all worked back of this wall. Is that separate from office and sales showroom? A. Yes.

Q. Do they share the same facilities like rest rooms and that sort of thing? A. Yes, they do. [451]

* * * * *

(Testimony of Erving C. Graham.)

Q. (By Mr. Pappy) You stated when there was an overflow at the Wilshire location some of the service work would be sent over to Bixel?

A. That is right.

Q. And vice versa? A. That is right.

Q. Under GM? A. That is right.

Q. How often did that happen?

A. Quite frequently.

Q. What do you mean by "Quite frequently"?

A. I would say we would—in numbers I would say two or three jobs possibly a day may go over or back and forth [453] between the two shops.

* * * * *

Q. You mentioned the term "dispatcher" as being an individual employee by Ehlers in a classification?

A. Yes.

Q. Is that the same type of work or the same individual generally as was described as a work dispatcher by GM? A. Yes.

Q. Work dispatchers were not covered under the GM contract, were they? A. No.

Q. How many work dispatchers did GM have at Wilshire? A. One.

Q. How many dispatchers does Ehlers have?

A. One.

Trial Examiner: Does the dispatcher work under your [454] supervision?

The Witness: Yes, sir.

Q. (By Mr. Pappy) Did he work under the supervision of the service manager under GM?

A. Yes, he did.

Q. What did the work dispatcher do at GM?

(Testimony of Erving C. Graham.)

A. At GM he took in a load of work for the day; made appointments from customers to have their cars brought in; and dispatched the work between the first and second floors.

Q. Did he have contact with mechanics in that regard? A. Yes, he did.

* * * * *

Mr. Lund: The parties will stipulate that in May of 1965 at the Wilshire location GM had seven service advisers and five parts clerks.

In June of 1965 Lou Ehlers Cadillac had six service advisers and six parts clerks.

Mr. Pappy: So stipulated.

Mr. Ansell: So stipulated.

Trial Examiner: The stipulation is accepted in the record.

Q. (By Mr. Pappy) Mr. Graham, during the time that General Motors was in the picture, did the parts clerks employed by [455] General Motors issue parts to mechanics? A. They did. [456]

* * * * *

Q. (By Mr. Pappy) What were the classifications by title of the mechanics under General Motors? What was the term used by General Motors to describe its mechanics?

Trial Examiner: Are their job classification titles at Ehlers any different from those used by General Motors?

If so, what are they?

The Witness: Yes. Under Ehlers we classify them as general mechanics, whereas under General Motors

(Testimony of Erving C. Graham.)

we had quite a number of specialists that could only do properly one type of job on a car like the hydromatic brakes, front end, and so forth. [460]

* * * * *

REDIRECT EXAMINATION

Q. (By Mr. Lund) In connection with the work that you have testified that was on the racks May 28th, which was as I understand you testified to, Mr. Lou Ehlers Cadillac completed on or after June 1, and can you give us any idea—I don't know how you make a comparison—was there a large number of cars that were held over, or a few?

A. There was approximately three collision jobs that were too big to clear out at the time, so they had to be done.

* * * * *

Q. Do you know whether Bixel did upholstery work? A. Yes. [462]

Q. Did Wilshire? A. No.

Q. Is that because you didn't have the equipment or the skills?

A. We didn't have the equipment or the space.

Q. You mentioned you gave some examples of minor adjustments that a service adviser might make, such as adjusting carburetors.

Did you give an exhaustive list, or are those some that you recall?

A. That is just some of them.

Q. Aside from making a minor adjustment, did service advisers in trying to determine what he should write on his order, what repairs are needed, doesn't he

(Testimony of Erving C. Graham.)

have to lift the hood and check the various pieces of the equipment and machinery and electrical equipment, and all types of equipment under the hood, the door, pans, glass, the door handles, accelerators?

He checks, if there is a problem in that area, almost every phase of the car, does he not?

A. He does. [463]

* * * * *

Mr. Pappy: To pragmatise the certification.

Second, I object on the grounds I specifically stated when the majority issue came up earlier. I think Wednesday or [465] Thursday that I wasn't relying on it solely or any presumption that it might be contained in the certification or in the contract, but I would put in positive evidence of membership as of May of all of these employees, which I subsequently did by stipulation.

Trial Examiner: Which was paid dues under compulsion. [466]

* * * * *

Mr. Lund: I have a number of oral stipulations.

First I would like to apologize because some of these may be adequately covered in the record, but my notes in those few cases do not show it. I just want to protect myself.

The first one we perhaps don't have to stipulate in the form I am suggesting. In Respondent Ehlers 8, which is the phone book photostatic copy of the GM facilities in Los Angeles, in the abbreviated form there are a lot of cities.

Maybe you can't tell what they are because you can't tell from the abbreviations. "EL" is El Segundo.

"VN" is Van Nuys. "S GT" is South Gate. "NH" is North Hollywood. "IND", I believe, is the City of Industry. "BRB" is Burbank. "P CTY", [471] I believe, is Panorama City. "HERM BCH" is Hermosa Beach. "VER" is Vernon.

These are all within the Greater Los Angeles Area.

May we so stipulate?

Mr. Ansell: So stipulate.

Mr. Pappy: So stipulated.

Trial Examiner: The stipulation is accepted.

* * * * *

I propose a stipulation with reference to what I referred to principally as the Bixel location, that is 1076 West Seventh Street, that on the south side of Seventh Street that address is at the corner of Bixel, and there is this building that has been referred to as 100 by 200 feet with eight stories and a basement, as Mr. Thomas testified to. [472]

This computes out to be 180,000 square feet.

That Cadillac Motor Company also used the property immediately to the east and used the car lot across the street on the north side of Seventh, which address was 1041 West Seventh.

And these additional properties composed approximately an additional 75,000 square feet.

Trial Examiner: Is there any objection to that stipulation?

Mr. Pappy: Did Mr. Thomas rent those or sublease those?

Mr. Ansell: Yes.

Mr. Lund: Yes.

Mr. Pappy: So stipulated.

Mr. Ansell: So stipulated.

Trial Examiner: The stipulation is received.

Mr. Lund: I propose a stipulation further as to the location of 1076, which is one block south of Wilshire Boulevard, and about one block west of Figueroa Street, and that Figueroa Street represents the western end of what is commonly referred to as the downtown central section, and that Seventh Street is a principal street to the downtown central business section.

Mr. Ansell: So stipulated.

Mr. Pappy: So stipulated.

Mr. Fredricks: I think it is two blocks west of Figueroa.

Trial Examiner: The stipulation is accepted. [473]

Mr. Lund: I propose a stipulation if an official of GM were available to testify, he would testify that with reference to the Los Angeles branch of the Cadillac Motor Car Division in the arrangement of installment financing of purchases by customers they placed about 50 per cent of such business with GMAC, and another 50 per cent with a local bank.

Trial Examiner: Any objection?

Mr. Ansell: No objection.

Mr. Pappy: No objection.

Trial Examiner: So stipulated.

Mr. Lund: Can we stipulate that GMC is an affiliate of General Motors Corporation?

Mr. Fredricks: So stipulated.

Trial Examiner: The stipulation is accepted.

Mr. Lund: That Cadillac Motor Car branch, Los Angeles branch, with reference to Wilshire as well as with reference to Bixel, terminated all of its material and service vendor contracts as of the end of May, 1965, and Lou Ehlers Cadillac did not take over any of them.

Mr. Fredricks: Nor did Thomas Cadillac.

Mr. Lund: You got it covered.

Mr. Fredricks: I got it covered by testimony.

Mr. Ansell: So stipulated.

Mr. Pappy: So stipulated.

Trial Examiner: The stipulation is received. [474]

* * * * *

Mr. Lund: With reference to General Motors contract of October 21, 1958 with the IAM and the Painters Union, which I think the record shows was executed December 4, 1958 and was effective until October 21, 1961, that contract did not contain any provisions different from those of the 1957 contract, if any, relative to whether the contract was to be binding on the purchaser or successor, and contained a union shop clause identical or similar to that in the 1957 contract.

Mr. Ansell: I will so stipulate.

Mr. Pappy: So stipulated.

With the objection with respect to the materiality of the successor employees or lack thereof.

Mr. Ansell: Same objection.

Trial Examiner: Very well.

Mr. Ansell: Phrasing it a little differently, the 1958 and 1961 contracts do not contain the successor and assignors' [476] clause.

Mr. Lund: I think I accept this as being true.

Mr. Fredricks: I will, too.

Mr. Ansell: I extend that to the Respondents.

Mr. Pappy: May I make an inquiry at this time?

Is there a contract between the 1961 contract and the 1964 contract?

Mr. Lund: No, I am coming to the 1961 contract.

Mr. Pappy: The 1961 contract ended and the 1964 contract took up then?

Mr. Lund: I propose now the same stipulation with reference to the GM contract of October 22, 1961 with the AM and the Painters Union.

The record shows, I think, it was executed October 19, 1961 and was effective until October 22, 1964.

Mr. Ansell: So stipulated.

Mr. Fredricks: So stipulated.

Mr. Pappy: So stipulated.

Trial Examiner: The stipulation is accepted.

Mr. Lund: Under the union contract of GM of December 1, 1964 and the 1961 contract, the "branch manager" referred to in the grievance steps or the Article IV, Section 1 (d) was Mr. Ferzackerly, and under the 1957 and '59 contract, the branch manager was Mr. Lester.

Mr. Ansell: I so stipulate. [477]

Mr. Pappy: So stipulated.

Trial Examiner: The stipulation is accepted.

Mr. Lund: Under the same GM 1964 and 1961 contracts, in Article IV, Section 12, the second sentence of the phrase "branch manager of the GM branch" and "general manager of the Cadillac Motor Car Division, Los Angeles Branch" referred to the office of Mr. Ferzackerly.

Under the 1957 and 1958 contract it referred to Mr. Lester.

Mr. Ansell: So stipulated.

Mr. Pappy: So stipulated.

Mr. Fredricks: So stipulated.

Trial Examiner: The stipulation is received.

Mr. Lund: Under the same sentence in the 1964 contract, neither the IAM or the Painters Union at any time in 1965 had any "negotiations" either with the

Cadillac Motor Car Division or Lou Ehlers Cadillac or served written notice of intent to picket. That is referred to in the last sentence.

When I propose this stipulation I am conceding the Union or the General Counsel will not admit that there was any obligation to do this. We will argue that.

This stipulation doesn't contain any admission as to their obligation.

Mr. Ansell: The Charging Party will so stipulate.

Mr. Fredricks: The same stipulation with respect to Respondent Thomas. [478]

Mr. Ansell: So stipulated.

That is, with that observation.

Mr. Pappy: What is the purpose of this?

We will so stipulate to the fact, that the General Counsel's position is correctly stated by Mr. Lund.

Mr. Lund: Lou Ehlers Cadillac does not now, after, and at no time had in its employ Joseph G. Pais, P-a-i-s, Mr. M. S. Lester, J. L. Dinniene, D-i-n-n-i-e-n-e, W. E. Keane, K-e-a-n-e, Mr. L. J. Ferzackerly, Mr. T. E. Cliff, Mr. Albert Pappas, or Mr. Roger Ullen, U-l-l-e-n.

Mr. Ansell: So stipulated.

Mr. Pappy: So stipulated.

Trial Examiner: The stipulation is accepted.

Mr. Fredricks: I would propose the same stipulation with respect to Respondent Thomas.

Mr. Ansell: So stipulated.

Mr. Pappy: So stipulated.

Trial Examiner: The stipulation is accepted.

Mr. Lund: All employees in the employ of Lou Ehlers Cadillac, including those who worked for General Motors Cadillac Motor Car Division in May of 1965,

were required by Lou Ehlers Cadillac to execute a federal income tax withholding exception form.

Mr. Ansell: So stipulated.

Mr. Pappy: Including supervisors? [479]

Mr. Lund: All employees, everyone.

Mr. Pappy: So stipulated.

Trial Examiner: The stipulation is accepted.

Mr. Fredricks: I propose the same stipulation with respect to Respondent Thomas.

Mr. Pappy: So stipulated.

Mr. Ansell: So stipulated.

Mr. Lund: Mr. Lou Ehlers was given a new Employer's account number, different from that of Cadillac Motor Car Division, relative to federal Social Security tax, reporting federal and California employment insurance, reporting California unemployment compensation disability.

Mr. Ansell: So stipulated.

We will extend that to Respondent Thomas.

Mr. Fredricks: Thank you.

Mr. Pappy: Yes.

Trial Examiner: The stipulation is accepted.

Mr. Lund: My client, Mr. Ehlers, had a little difficulty remembering the names of certain businesses. If Lou Ehlers were called, he would testify that Business Machines, Limited is the name of the company with which Lou Ehlers entered into a contract for service of his business machines.

Mr. Ansell: So stipulated.

Mr. Pappy: So stipulated.

Trial Examiner: The stipulation is accepted. [480]

Mr. Lund: He would so testify Industrial Linen Service was the name of the company Lou Ehlers entered into a contract with for furnishing linens.

Mr. Pappy: So stipulated.

Mr. Ansell: So stipulated.

Trial Examiner: The stipulation is accepted.

Mr. Lund: Lou Ehlers would also testify Lou Ehlers Cadillac has engaged in considerable advertising for the sale of its new and used cars at 5151 Wilshire Boulevard.

Mr. Ansell: So stipulated.

Mr. Pappy: So stipulated.

Trial Examiner: The stipulation is accepted.

Mr. Lund: I propose a stipulation that none of the Lou Ehlers Cadillac employees refused to cross the Union's picket line to continue to work for Lou Ehlers Cadillac. [481]

* * * * *

Mr. Ansell: I am prepared to stipulate to that fact.

Mr. Lund: Do you accept the stipulation?

Mr. Pappy: Yes, I will so stipulate.

Trial Examiner: The stipulation is received.

Mr. Lund: Lou Ehlers had an agreement with the union at Madison, Wisconsin, which agreement was with the United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO.

Mr. Ansell: So stipulated.

Mr. Pappy: So stipulated.

Trial Examiner: The stipulation is accepted.

Mr. Ansell: I would stipulate he would so testify, yes. [482]

* * * * *

Mr. Pappy: I will propose the following stipulation, Mr. Examiner, that shortly after the election conducted at General [508] Motors among the IAM employees, the mechanics, General Motors and the Union in fact

included pickup and delivery men, although they never amended them out of the contract exclusions subsequent contracts executed subsequent to that date. [509]

* * * * *

Trial Examiner: Very well.

The stipulation is acceptable.

With all of these stipulations, does General Counsel take the position now that the pickup and delivery men, those who spend substantially all of their time in such work, should be included or excluded from the appropriate unit.

Mr. Pappy: They should be included. [511]

* * * * *

Trial Examiner: Would you point out to me what you think in the Ehlers series of letters establishes that a demand was made upon Ehlers to bargain with the Union as an appropriate unit?

Mr. Pappy: Nothing is mentioned by unit. I will concede that.

Trial Examiner: Nothing is mentioned about bargaining. Is that right? Something is mentioned about a contract.

Mr. Pappy: There is the primary thrust about the letters, about the contract, but as I recall some of the letters make mention of bargaining rights.

Mr. Lund: You won't find any. There were no such letters. [514]

* * * * *

Trial Examiner: This may be, but the point I raised earlier was not so much the fact that when a union demanded bargaining rights, it has to demand the bargaining in an appropriate unit.

Mr. Pappy: Yes, it must.

Trial Examiner: It can't get off the ground unless it establishes the union made such a demand. [524]

* * * * *

Trial Examiner: Let's emphasize again what I noted before. Is there a difference in making a demand for the specific enforcement under the contract, or is it for bargaining rights?

Mr. Pappy: Which again I must answer I will subsequently take a position on.

Trial Examiner: In my estimation of this case this becomes one of the important problems, and the first one to be answered by the Trial Examiner. At least it appears to me now, but maybe after I read the briefs I may have an altogether different idea on the subject. [531]

* * * * *

Trial Examiner: There are cases where the Board has decided, as I recall, where they held there were differences between the situation where you have a voluntary checkoff without a union security clause, and where you have a checkoff with a union security clause in determining whether or not a union established a majority status. [542]

* * * * *

Trial Examiner: This stepping into the shoes may be a good analogy. I assume General Motors was wearing a couple of pairs of shoes, and when the successorship came along, each one of the successors wore one of General Motors' shoes.

Assuming this is true, would you end up by reasoning that a multi-Employer unit is the appropriate unit under the circumstances?

Mr. Ansell: Not here, in my judgment, where you have two extensions of bargaining units; although there was one contract covering them. [549]

* * * * *

Trial Examiner: Obviously, if the Union makes a demand on a company for bargaining rights within an inappropriate unit, the Company has no obligation to respond. [561]

* * * * *

Trial Examiner: Nobody believes a multi-Employer unit would be appropriate in this case after successorship. [563]

* * * * *

Trial Examiner: I must admit I am somewhat concerned with the fact that the Union presented no evidence whatsoever of a reaffirmation of the employees' designation and bargaining representative.

I know in many of the successorship cases the Union will come in with new designations which are current. In this case there is none.

I assume that you will comment in your brief as to why something of that character isn't necessary.

In view of the age of the certification, as well as the fact that the only evidence which you have presented showed majority is the fact that under the contract the employees have been paying their current dues, and under the contract, which requires payment of dues, that the circumstances would require a discharge if dues aren't paid, this particular point or segment of the case bothers me considerably.

I would assume there would be some evidence to show [597] some actual current commitment on the

part of the employees as of the date of the acquisition.
[598]

* * * * *

Trial Examiner: Well, a Trial Examiner, the Board obviously has said a number of times, is to be bound by the precedent of the Board.

Apparently this is applicable even though the Circuit Court may differ with the Board.

* * * * *

Trial Examiner: If Rollick is in point, and if it were [605] a Board decision, the Trial Examiner would be bound by it. [606]

* * * * *

GENERAL COUNSEL'S EXHIBIT No. 1-A.

Form NLRB-501

United States of America
National Labor Relations Board

CHARGE AGAINST EMPLOYER

Instructions—File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

Case No. 21-CA-6744-2. Date Filed: 6-3-65.

1. Employer Against Whom Charge Is Brought:

Name of Employer: La Rue Thomas.

Number of Workers Employed: Approximately 7.

Address of Establishment: Cadillac Motor Car, 1076 West 7th Street, Los Angeles, California.

Type of Establishment: Automobile Agency.

Identify principle product or service: Automobile Sales.

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and 3 and 5 of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge: The Painters Union, Local 1798 represents a majority of the Employees of the Employer in an appropriate unit and under a Collective Bargaining Agreement signed by the Employer's predecessor, General Motors, which is presently in effect. The Employer, since on or about May 15, 1965, has unilaterally and without bargaining in good faith with

the Union discussed and negotiated terms and conditions of employment with the employees represented by the Union. The Employer has discharged many of such employees and refused to hire employees for the reason that the employees are represented by the Union. At all times the Employer has refused to recognize Painters Local 1798 and has refused to meet and bargain in good faith with the Union.

3. Full Name of Party Filing Charge: Painters Local Union, AFL-CIO, Local 1798.

4. Address: 846 South Union Avenue, Los Angeles, California.

Telephone No.: DUnkirk 5-8487.

5. Full Name of National or International Labor Organization of Which It Is an Affiliate of Constituent Unit: Brotherhood of Painters, Decorators & Paper Hangers of America, AFL-CIO.

6. Declaration: I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

PAINTERS UNION, LOCAL 1798,
AFL-CIO

/s/ By LEO GEFFNER.

LEO GEFFNER

ATTORNEY

Dated June 2, 1965

Admitted in Evidence 2-23-66.

GENERAL COUNSEL'S EXHIBIT No. 1-C.
Form NLRB-501

United States of America
National Labor Relations Board

AMENDED CHARGE AGAINST EMPLOYER

Instructions: File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

Case No. 31-CA-83-2. Date Filed: 11-17-65.

1. Employer Against Whom Charge Is Brought:

Name of Employer: Thomas Cadillac, Inc.

Number of Workers Employed: Approximately 7.

Address of Establishment: 1076 West 7th Street, Los Angeles, Calif.

Type of Establishment: Automobile Agency.

Identify principal product or service: Automobile Sales.

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8 (a), subsections (1) and (5) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge: Since on or about May 15, 1965, the Employer has refused, and continues to refuse, to bargain collectively in good faith with the Painters Union, Local 1798, as the exclusive representative of its employees in an appropriate unit.

By these and other acts, the Employer has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full Name of Party Filing Charge: Automotive, Marine, Production Finishers, Equipment Maintenance and Public Service Painters, Local Union 1798, Brotherhood of Painters.

4. Address: Decorators and Paper Hangers of America, AFL-CIO, 846 S. Union Avenue, Los Angeles, Calif.

Telephone No: DUnkirk 5-8487.

5. Full Name of National or International Labor Organization of Which It Is an Affiliate of Constituent Unit: Brotherhood of Painters, Decorators, and Paper Hangers of America, AFL-CIO.

6. Declaration: I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

LEVY, DeROY, GEFNER & VAN
BOURG

/s/ By [ILLEGIBLE]

Attorney

Dated: November 17, 1965.

Admitted in Evidence 2-23-66.

GENERAL COUNSEL'S EXHIBIT No. 1-E.
Form NLRB-501

United States of America
National Labor Relations Board

CHARGE AGAINST EMPLOYER

Instructions: File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

Case No. 21-CA-6744-3. Date Filed: 6-3-65.

1. Employer Against Whom Charge Is Brought:

Name of Employer: Lou Ehlers.

Number of Workers Employed: Approximately 3.

Address of Establishment: Cadillac Motor Car, 5151 Wilshire Boulevard, Los Angeles, California.

Type of Establishment: Automobile Agency.

Identify principal product or service: Automobile Sales.

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8 (a), subsections (1) and 3 and 5 of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge: The Painters Union, Local 1798 represents a majority of the Employees of the Employer in an appropriate unit and under a Collective Bargaining Agreement signed by the Employer's predecessor, General Motors, which is presently in effect. The Employer, since on or about May 15, 1965, has unilaterally and without bargaining in good faith with the Union discussed and negotiated terms and conditions of employment with the employees represented by the Union. The Employer has discharged many of such employees and refused to hire employees for the reason that the employees are represented by the Union. At all times the Employer has refused to recognize Painters Local 1798 and has refused to meet and bargain in good faith.

3. Full Name of Party Filing Charge: Painters Local Union, AFL-CIO, Local 1798.

4. Address: 846 South Union Avenue, Los Angeles, California.

Telephone No.: DUnkirk 5-8487.

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit: Brotherhood of Painters, Decorators & Paper Hangers of America, AFL-CIO.

6. Declaration: I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

PAINTERS UNION, LOCAL 1798,
AFL-CIO

/s/ By LEO GEFFNER.

LEO GEFFNER

Attorney

Dated: June 2, 1965.

Admitted in Evidence 2-23-66.

GENERAL COUNSEL'S EXHIBIT No. 1-G.
Form NLRB-501

United States of America
National Labor Relations Board

AMENDED CHARGE AGAINST EMPLOYER

Instructions: File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

Case No. 31-CA-83-3. Date Filed: 11-17-65.

330 *International Assn. of Machinists, etc. vs.*

1. Employer Against Whom Charge Is Brought:

Name of Employer: Lou Ehlers Cadillac.

Number of Workers Employed: Approximately 3.

Address of Establishment: 5151 Wilshire Boulevard, Los Angeles, California.

Type of Establishment: Automobile Agency.

Identify principal product or service: Automobile Sales.

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8 (a), subsections (1) and (5) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge:

Since on or about May 15, 1965, the Employer has refused, and continues to refuse, to bargain collectively in good faith with the Painters Union, Local 1798, as the exclusive representative of its employees in an appropriate unit.

By these and other acts, the Employer has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full Name of Party Filing Charge: Automotive, Marine, Production Finishers, Equipment Maintenance and Public Service Painters, Local Union 1798, Brotherhood of Painters.

4. Address: Decorators and Paper Hangers of America, AFL-CIO, 846 S. Union Avenue, Los Angeles, Calif.

Telephone No.: DUnkirk 5-8487.

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit: Brotherhood of Painters, Decorators and Paper Hangers of America, AFL-CIO

6. Declaration: I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

LEVY, DeROY, GEFFNER, & VAN
BOURG

/s/ By [ILLEGIBLE]
Attorney

Dated: November 17, 1965.

Admitted in Evidence 2-23-66.

GENERAL COUNSEL'S EXHIBIT No. 1-I.
Form NLRB-501

United States of America
National Labor Relations Board

CHARGE AGAINST EMPLOYER

Instructions: File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

Case No. 21-CA-6747-2. Date Filed: 6-4-65.

1. Employer Against Whom Charge is Brought:

Name of Employer: Cecil Thomas & Sons (Cadillac Motor Car Agency).

Number of Workers Employed: 100

Address of Establishment: 1076 West 7th Street, Los Angeles, California.

Type of Establishment: Automobile manufacturer.

Identify principal product or service: Automobiles.

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (3) and (5) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge:

Above employer by contract with Cadillac Motor Car Division of General Motors Corp. did on or about June 1, 1965 assume the operation and control of the Cadillac agency located at above address. Said employer is operating with substantially the same equipment and managerial personnel. Despite fact that there presently exists a collective bargaining agreement between employer's predecessor and undersigned union, and that undersigned union represents the employees covered by the contracts, employer has at all times refused to meet and negotiate with the Union concerning the effect of such change of ownership upon the wages, hours and working conditions of the employees covered by the contract.

Furthermore, on or about May 28, 1965, above employer terminated approximately 95% of the employees covered by the contract.

Said acts and conduct are designed solely for the purpose of intimidating, coercing and restraining the employees in the exercise of their right to be represented by collective bargaining agents of their choice, and furthermore to avoid recognizing and dealing with undersigned union and the Painters Union.

By these and other acts, employer has violated Sections 8(a) (1), (3) and (5) of the Act.

3. Full Names of Party Filing Charge: District Lodge 94, International Association of Machinists.

4. Address: 214 South Loma Drive, Los Angeles, California 90026.

Telephone No. HU-36630.

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit:

6. Declaration: I declare that I have read the above charge and the statements therein are true to the best of my knowledge and belief.

RICHMAN, GARRETT & ANSELL

/s/ By HERBERT M. ANSELL

Herbert M. Ansell

Attorney for the Union

Dated June 3, 1965.

Admitted in Evidence 2-23-66.

GENERAL COUNSEL'S EXHIBIT No. 1-K.
Form NLRB-501

United States of America
National Labor Relations Board

AMENDED CHARGE AGAINST EMPLOYER

Instructions: File an Original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

Case No. 31-CA-84-2. Date Filed: 11-17-65.

1. Employer Against Whom Charge is Brought:

Name of Employer: Thomas Cadillac, Inc.

Number of Workers Employed: 100.

Address of Establishment: 1076 West 7th Street, Los Angeles, California.

Type of Establishment: Automobile Agency.

Identify principal product or service: Automobiles.

The above-named employer has engaged and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (5) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge:

Since on or about May 15, 1965, the Employer has refused, and continues to refuse, to bargain collectively in good faith with District Lodge 94, International Association of Machinists, as the exclusive representative of its employees in an appropriate unit.

By these and other acts, the Employer has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

Full Name of Party Filing Charge: International Association of Machinists, District Lodge 94, AFL-CIO.

4. Address: 214 South Loma Drive, Los Angeles, California 90026.

Telephone No. HU 3-6630.

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit:

6. Declaration: I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

RICHMAN, GARRETT & ANSELL
/s/ By HERBERT M. ANSELL
Herbert M. Ansell
Attorney for the Union

Dated November 17, 1965.

Admitted in Evidence 6-23-66.

GENERAL COUNSEL'S EXHIBIT No. 1-M.

United States of America
National Labor Relations Board

CHARGE AGAINST EMPLOYER

Instructions: File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

Case No. 21-CA-6748-2. Date Filed: 6-4-65.

1. Employer Against Whome Charge Is Brought:

Name of Employer: Lou Ehlers, Cadillac Motor Car Agency.

Number of Workers Employed: 100.

Address of Establishment: 5151 Wilshire Boulevard, Los Angeles, California.

Type of Establishment: Automobile manufacturer.

Identify principal product or service: Automobiles.

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of

section 8(a), subsections (1) and (3) and (5) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge:

On or about June 1, 1965, above employer by contract with Cadillac Motor Car Division of General Motors Corp. assumed operation and control of the Cadillac dealership at above address. The above employer is operating the same business as his predecessor, utilizing substantially the same equipment and managerial force, etc. Despite the fact that a collective bargaining agreement has been in effect between Cadillac Motor Car Division, and that representatives of the Machinists and Painters Union attempted to meet with him and negotiate the effects of the change-over in management as such would relate to the conditions of employment of the employees covered by the contract, and despite the fact that the undersigned union has represented at all times pertinent the employees covered by the contract working in Machinists classifications, employer has refused to meet with the union, and did on or about May 30, 1965 terminate without cause approximately 95% of the work force. Furthermore, said employer has refused to recognize his obligation to abide by the terms of the existing collective bargaining agreement and to negotiate with the Machinists and Painters Union in good faith.

Said acts and conduct are designed solely for the purpose of frustrating the wishes of the employees to be represented by undersigned union and the Painters Union.

By these and other acts, employer has violated Sections 8 (a) (1), (3) and (5) of the Act.

3. Full Name of Party Filing Charge: District Lodge 94, International Association of Machinists.

4. Address: 214 South Loma Drive, Los Angeles, California 90026.

Telephone No. HU-3-6630.

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit:

6. Declaration: I declare that I have read the above charge and that the statements therein are true to be best of my knowledge and belief.

RICHMAN, GARRETT & ANSELL

/s/ By HERBERT M. ANSELL

Herbert M. Ansell

Attorney for the Union

Dated June 3, 1965.

Admitted in Evidence 6-23-66.

GENERAL COUNSEL'S EXHIBIT No. 1-O.

United States of America

National Labor Relations Board

AMENDED CHARGE AGAINST EMPLOYER

Instructions: File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

Case No. 31-CA-85-2. Date Filed: 11-17-65.

338 *International Assn. of Machinists, etc. vs.*

1. Employer Against Whom Charge Is Brought:

Name of Employer: Lou Ehlers Cadillac.

Number of Workers Employed: 100.

Address of Establishment: 5151 Wilshire Boulevard,
Los Angeles, California.

Type of Establishment: Automobile Agency.

Identify principal product or service: Automobiles.

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (5) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of Charge:

Since on or about May 15, 1965, the Employer has refused, and continues to refuse, to bargain collectively in good faith with District Lodge 94, International Association of Machinists, as the exclusive representative of its employees in an appropriate unit.

By these and other acts, the Employer has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed by Section 7 of the Act.

3. Full Name of Party Filing Charge: International Association of Machinists, District Lodge 94, AFL-CIO.

4. Address: 214 South Loma Drive, Los Angeles, California 90026.

Telephone No. HU 3-6630.

5. Full Name of National or International Labor Organization of Which It is an Affiliate or Constituent Unit.

6. Declaration: I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

RICHMAN, GARRETT & ANSELL
/s/ HERBERT M. ANSELL
Herbert M. Ansell
Attorney for the Union

Dated November 17, 1965.

Admitted in Evidence 2-23-66.

GENERAL COUNSEL'S EXHIBIT No. 1-Q.

United States of America
Before the National Labor Relations Board
Region 31

Case No. 31-CA-83-2
(formerly Case No. 21-CA-6744-2)

THOMAS CADILLAC, INC.

and

AUTOMOTIVE, MARINE, PRODUCTION FIN-
ISHERS, EQUIPMENT MAINTENANCE
AND PUBLIC SERVICE PAINTERS, LO-
CAL UNION 1798, BROTHERHOOD OF
PAINTERS, DECORATORS AND PAPER
HANGERS OF AMERICA, AFL-CIO

340 *International Assn. of Machinists, etc. vs.*

Case No. 31-CA-83-3

(formerly Case No. 21-CA-6744-3)

LOU EHLERS CADILLAC

and

AUTOMOTIVE, MARINE, PRODUCTION FINISHERS, EQUIPMENT MAINTENANCE AND PUBLIC SERVICE PAINTERS, LOCAL UNION 1798, BROTHERHOOD OF PAINTERS, DECORATORS AND PAPER HANGERS OF AMERICA, AFL-CIO

Case No. 31-CA-84-2

(formerly Case No. 21-CA-6747-2)

THOMAS CADILLAC, INC.

and

INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT LODGE 94, AFL-CIO

Case No. 31-CA-85-2

(formerly Case No. 21-CA-6748-2)

LOU EHLERS CADILLAC

and

INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT LODGE 94, AFL-CIO

ORDER CONSOLIDATING CASES, CONSOLIDATED COMPLAINT, AND NOTICE OF HEARING

It having been charged in Case No. 31-CA-83-2 by Automotive, Marine, Production Finishers, Equipment Maintenance and Public Service Painters, Local Union 1798, Brotherhood of Painters, Decorators and Paper

Hangers of America, AFL-CIO, herein called the Painters Union, that Thomas Cadillac, Inc., herein called Respondent Thomas; and in Case No. 31-CA-83-3 by the Painters Union that Lou Ehlers Cadillac, herein called Respondent Ehlers; and in Case No. 31-CA-84-2 by the International Association of Machinists, District Lodge 94, AFL-CIO, herein called the IAM, that Respondent Thomas; and in Case No. 31-CA-85-2 that Respondent Ehlers, have engaged in, and are engaging in, unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151 et seq., herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the undersigned Regional Director, having duly considered the matter and deeming it necessary in order to effectuate the purposes of the Act, and to avoid unnecessary costs or delay,

HEREBY ORDERS, pursuant to Section 102.33 of the Board's Rules and Regulations, Series 8, as amended, that these cases be, and they hereby are, consolidated.

Said cases having been consolidated for hearing, the General Counsel of the Board, by the undersigned Regional Director, pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, Series 8, as amended, hereby issues this Consolidated Complaint and Notice of Hearing and alleges as follows:

1. (a) The original charge in Case No. 31-CA-83-2 was filed by the Painters Union on June 3, 1965, and a copy was served on Respondent Thomas by registered mail on June 3, 1965.

(b) The amended charge in Case No. 31-CA-83-2 was filed by the Painters Union on November 17, 1965, and a copy was served on Respondent Thomas by registered mail on November 17, 1965.

(c) The original charge in Case No. 31-CA-83-3 was filed by the Painters Union on June 3, 1965, and a copy was served on Respondent Ehlers by registered mail on June 3, 1965.

(d) The amended charge in Case No. 31-CA-83-3 as filed by the Painters Union on November 17, 1965, and a copy was served on Respondent Ehlers by Registered mail on November 17, 1965.

(e) The original charge in Case No. 31-CA-84-2 filed by the IAM on June 4, 1965, and a copy was served on Respondent Thomas by registered mail on June 4, 1965.

(f) The amended charge in Case No. 31-CA-84-2 was filed by the IAM on November 17, 1965, and a copy was served on Respondent Thomas by registered mail on November 17, 1965.

(g) The original charge in Case No. 31-CA-85-2 was filed by the IAM on June 4, 1965, and a copy was served on Respondent Ehlers by registered mail on June 4, 1965.

(h) The amended charge in Case No. 31-CA-85-2 was filed by the IAM on November 17, 1965, and a copy was served on Respondent Ehlers by registered mail on November 17, 1965.

2. Cadillac Motor Car Division, General Motors Corporation, Los Angeles branch, herein called Cadillac, prior to June 1, 1965, operated two retail Cadillac sales and service agencies, to wit, one located at 5151

Wilshire Boulevard, and one located at 1076 West Seventh Street, both in Los Angeles, California. At each of these locations, in the course and conduct of its business operations, Cadillac annually did a gross volume of business in excess of \$500,000. At each of these locations, Cadillac annually received goods valued in excess of \$50,000 directly from suppliers located outside the State of California.

3. (a) Respondent Ehlers is, and has been at all times material herein, a California corporation with its office and principal place of business located at 5151 Wilshire Boulevard, Los Angeles, California, where it operates as franchised Cadillac automobile sales and service dealer.

(b) On or about June 1, 1965, Respondent Ehlers purchased from Cadillac a substantial portion of the physical assets, goodwill, accounts receivable, and other trade assets of Cadillac, including the sales and service operation located at 5151 Wilshire Boulevard, Los Angeles, California, referred to in paragraph 2 above, and assumed the liabilities theretofore incurred by Cadillac at the said location. Since on or about June 1, 1965, Cadillac has ceased to operate the said sales and service agency located at 5151 Wilshire Boulevard, and at all times material herein thereafter Respondent Ehlers has operated said sales and service agency, and has been engaged in substantially the same business operations formerly engaged in by Cadillac described in paragraph 2 above, and has employed substantially the same employees and supervisors as had been employed by Cadillac at its 5151 Wilshire Boulevard location.

(c) Respondent Ehlers is, and has been since on or about June 1, 1965, the successor to Cadillac at Cad-

illac's location at 5151 Wilshire Boulevard, Los Angeles, California.

(d) Respondent Ehlers, in the course and conduct of its business operations, in the 12-month period ending June 1, 1966, will do a gross volume of business in excess of \$500,000 and will, during the same period, purchase and receive goods valued in excess of \$50,000 directly from suppliers located outside the State of California.

4. Respondent Ehlers is, and at all times material herein has been, an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

5. (a) Respondent Thomas is, and has been at all times material herein, a California corporation with its office and principal place of business located at 1076 West Seventh Street, Los Angeles, California, where it operates as a franchised Cadillac automobile sales and service dealer.

(b) On or about June 1, 1965, Respondent Thomas purchased from Cadillac a substantial portion of the physical assets, goodwill, accounts receivable, and other trade assets of Cadillac, including the sales and service operation located at 1076 West Seventh Street, Los Angeles, referred to in paragraph 2 above, and assumed the liabilities theretofore incurred by Cadillac at the said location. Since on or about June 1, 1965, Cadillac has ceased to operate the said sales and service agency located at 1076 West Seventh Street, and at all times material herein thereafter Respondent Thomas has operated said sales and service agency, and has been engaged in substantially the same business operations formerly engaged in by Cadillac described in paragraph

2 above, and has employed substantially the same employees and supervisors as had been employed by Cadillac at its 1076 West Seventh Street location.

(c) Respondent Thomas is, and has been since on or about June 1, 1965, the successor to Cadillac at Cadillac's location at 1076 West Seventh Street, Los Angeles, for the purposes of the Act.

(d) Respondent Thomas, in the course and conduct of its business operations, in the 12-month period ending June 1, 1966, will do a gross volume of business in excess of \$500,000, and will, during the same period, purchase and receive goods valued in excess of \$50,000 directly from suppliers located outside the State of California.

6. Respondent Thomas is, and at all times material herein has been, an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

7. The IAM is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

8. The Painters Union is now, and has been at all times material herein a labor organization within the meaning of Section 2(5) of the Act.

9. Prior to June 1, 1965, Irving Graham occupied the position of foreman for Cadillac at its 5151 Wilshire Boulevard location, and during May 1965 was an agent of Respondent Ehlers, acting on its behalf, within the meaning of Section 2(2) and 2(13) of the Act.

10. Since June 1, 1965, Irving Graham has occupied the position of service manager for Respondent Ehlers,

and has been, and is now, an agent of Respondent Ehlers, acting on its behalf, and is a supervisor within the meaning of Section 2(11) of the Act.

11. Prior to June 1, 1965, L. C. Coats occupied the position of general service manager for Cecil L. Thomas and Sons, Inc., Harbor City, California, and during May 1965 was an agent of Respondent Thomas, acting on its behalf, within the meaning of Section 2(2) and 2-(13) of the Act.

12. Since June 1, 1965, L. C. Coats has occupied the position of general service manager for Respondent Thomas, and has been, and is now, an agent of Respondent Thomas, acting on its behalf, and is a supervisor within the meaning of Section 2(11) of the Act.

13. At all times material herein, at least until on or about May 31, 1965, all mechanics, polishers, washers, lubricators, garage attendants, body and fender men, machinists, elevator operators, trimmers, and maintenance men employed by Cadillac at its 5151 Wilshire Boulevard and 1076 West Seventh Street, Los Angeles, locations, excluding branch manager, assistant branch manager, sales manager, used car manager, service manager, assistant service manager, parts manager, assistant parts manager, general foremen, foremen, assistant foremen, inspectors, timekeepers, shop clerks, parts clerks, service salesmen, office clerical employees, new and used car salesmen, tower operator, pickup drivers-parts, pickup and delivery men, guards, operating engineers, supervisors, clerical employees, G. M. Tech students, and work dispatchers, constituted a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

14. At all times material herein, at least until on or about May 31, 1965, all painters employed by Cadillac at its 5151 Wilshire Boulevard and 1076 West Seventh Street, Los Angeles, locations, excluding branch manager, assistant branch manager, sales manager, used car manager, service manager, assistant service manager, parts manager, assistant parts manager, general foremen, foremen, assistant foremen, inspectors, timekeepers, shop clerks, parts clerks, service salesmen, office clerical employees, new and used car salesmen, tower operator, pickup drivers-parts, pickup and delivery men, guards, operating engineers, supervisors, clerical employees, G. M. Tech students, and work dispatchers, constituted a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

15. On December 7, 1964, Cadillac, the IAM, and the Painters Union entered into a collective-bargaining agreement effective through December 1, 1967, and from year to year thereafter, if not modified or terminated, covering wages, hours, and working conditions of the employees in the units described in paragraphs 13 and 14 above.

16. The IAM, since at least December 1, 1964, has been designated or selected by a majority of the employees in the unit described in paragraph 13 above as their representative for the purposes of collective bargaining, and, by virtue of Section 9(a) of the Act, has been, at least until on or about May 31, 1965, the exclusive bargaining representative of all of the employees in said unit with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

17. The Painters Union, since at least December 1, 1964, has been designated or selected by a majority of the employees in the unit described in paragraph 14 above as their representative for the purposes of collective bargaining, and, by virtue of Section 9(a) of the Act, has been, at least until on or about May 31, 1965, the exclusive bargaining representative of all the employees in said unit with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

18. Since on or about June 1, 1965, all mechanics, polishers, washers, lubricators, garage attendants, body and fender men, machinists, elevator operations, trimmers, and maintenance men employed by Respondent Ehlers, excluding branch manager, assistant branch manager, sales manager, used car manager, service manager, assistant service manager, parts manager, assistant parts manager, general foremen, foremen, assistant foremen, inspectors, timekeepers, shop clerks, parts clerks, service salesmen, office clerical employees, new and used car salesmen, tower operator, pickup drivers-parts, pickup and delivery men, guards, operating engineers, supervisors, clerical employees, G. M. Tech students, and work dispatchers, have constituted a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

19. Since on or about June 1, 1965, all mechanics, polishers, washers, lubricators, garage attendants, body and fender men, machinists, elevators operators, trimmers, and maintenance men employed by Respondent Thomas, excluding branch manager, assistant branch manager, sales manager, used car manager, service

manager, assistant service manager, parts manager, assistant parts manager, general foremen, foremen, assistant foremen, inspectors, timekeepers, shop clerks, parts clerks, service salesmen, office clerical employees, new and used car salesmen, tower operator, pickup drivers-parts, pickup and delivery men, guards, operating engineers, supervisors, clerical employees, G. M. Tech students, and work dispatchers, have constituted a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

20. Since on or about June 1, 1965, the IAM has represented, and continues to represent, a majority of Respondent Ehlers' employees in the unit described in paragraph 18 above, and, by virtue of Section 9(a) of the Act, is now, and has been at all times material herein, the exclusive representative of all employees in the said unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

21. Since on or about June 1, 1965, the IAM has represented, and continues to represent, a majority of Respondent Thomas' employees in the unit described in paragraph 19 above, and, by virtue of Section 9(a) of the Act, is now, and has been at all times material herein, the exclusive representative of all employees in the said unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

22. Since on or about May 19, 1965, and thereafter, the IAM has requested, and continues to request, that Respondent Ehlers bargain collectively with

respect to rates of pay, wages, hours of employment, and other terms and conditions of employment as the exclusive collective-bargaining representative of the employees of Respondent Ehlers in the unit described in paragraph 18 above.

23. Since on or about May 17, 1965, and thereafter, the IAM has requested, and continues to request, that Respondent Thomas bargain collectively with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment as the exclusive collective-bargaining representative of the employees of Respondent Thomas in the unit described in paragraph 19 above.

24. Since at least on or about June 1, 1965, the IAM has requested, and is requesting, Respondent Ehlers to honor and give effect to the collective-bargaining agreement described in paragraph 15 above.

25. Since at least on or about June 1, 1965, the IAM has requested, and is requesting, Respondent Thomas to honor and give effect to the collective-bargaining agreement described in paragraph 15 above.

26. Since on or about May 19, 1965, and at all times thereafter, Respondent Ehlers has refused, and continues to refuse, to bargain collectively with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, with the IAM as the exclusive collective-bargaining representative of its employees in the appropriate unit described in paragraph 18 above.

27. Since on or about May 17, 1965, and at all times thereafter, Respondent Thomas has refused, and continues to refuse, to bargain collectively with respect

to rates of pay, wages, hours of employment, and other terms and conditions of employment, with the IAM as the exclusive collective-bargaining representative of its employees in the appropriate unit described in paragraph 19 above.

28. Since on or about June 1, 1965, Respondent Ehlers has rejected the IAM's request, described in paragraph 24 above, and has refused to honor or give effect to the collective-bargaining agreement described in paragraph 15 above.

29. Since on or about June 1, 1965, Respondent Thomas has rejected the IAM's request, described in paragraph 25 above, and has refused to honor or give effect to the collective-bargaining agreement described in paragraph 15 above.

30. Since on or about June 1, 1965, all painters employed by Respondent Ehlers, excluding branch manager, assistant branch manager, sales manager, used car manager, service manager, assistant service manager, parts manager, assistant parts manager, general foremen, foremen, assistant foremen, inspectors, time-keepers, shop clerks, parts clerks, service salesmen, office clerical employees, new and used car salesmen, tower operator, pickup drivers-parts, pickup and delivery men, guards, operating engineers, supervisors, clerical employees, G. M. Tech students, and work dispatchers, have constituted a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

31. Since on or about June 1, 1965, all painters employed by Respondent Thomas, excluding branch manager, assistant branch manager, sales manager,

used car manager, service manager, assistant service manager, parts manager, assistant parts manager, general foremen, foremen, assistant foremen, inspectors, timekeepers, shop clerks, parts clerks, service salesmen, office clerical employees, new and used car salesmen, tower operator, pickup drivers-parts, pickup and delivery men, guards, operating engineers, supervisors, clerical employees, G. M. Tech students, and work dispatchers, have constituted a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

32. Since on or about June 1, 1965, the Painters Union has represented, and continues to represent, a majority of Respondent Ehlers' employees in the unit described in paragraph 30 above, and, by virtue of Section 9(a) of the Act, is now, and has been at all times material herein, the exclusive representative of all employees in the said unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

33. Since on or about June 1, 1965, the Painters Union has represented, and continues to represent, a majority of Respondent Thomas' employees in the unit described in paragraph 31 above, and, by virtue of Section 9(a) of the Act, is now, and has been at all times material herein, the exclusive representative of all employees in the said unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

34. Since on or about May 19, 1965, and thereafter, the Painters Union has requested, and contin-

ues to request, that Respondent Ehlers bargain collectively with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment as the exclusive collective-bargaining representative of the employees of Respondent Ehlers in the unit described in paragraph 30 above.

35. Since on or about May 17, 1965, and thereafter, the Painters Union has requested, and continues to request, that Respondent Thomas bargain collectively with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment as the exclusive collective-bargaining representative of the employees of Respondent Thomas in the unit described in paragraph 31 above.

36. Since at least on or about June 1, 1965, the Painters Union has requested, and is requesting, Respondent Ehlers to honor and give effect to the collective-bargaining agreement described in paragraph 15 above.

37. Since at least on or about June 1, 1965, the Painters Union has requested, and is requesting, Respondent Thomas to honor and give effect to the collective-bargaining agreement described in paragraph 15 above.

38. Since on or about May 19, 1965, and at all times thereafter, Respondent Ehlers has refused, and continues to refuse, to bargain collectively with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, with the Painters Union as the exclusive collective-bargaining representative of its employees in the appropriate unit described in paragraph 30 above.

39. Since on or about May 17, 1965, and at all times thereafter, Respondent Thomas has refused, and continues to refuse, to bargain collectively with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, with the Painters Union as the exclusive collective-bargaining representative of its employees in the appropriate unit described in paragraph 31 above.

40. Since on or about June 1, 1965, Respondent Ehlers has rejected the Painters Union's request, described in paragraph 36 above, and has refused to honor or give effect to the collective-bargaining agreement described in paragraph 15 above.

41. Since on or about June 1, 1965, Respondent Thomas has rejected the Painters Union's request, described in paragraph 37 above, and has refused to honor or give effect to the collective-bargaining agreement described in paragraph 15 above.

42. Since on or about June 1, 1965, Respondent Ehlers has, without notification to or consultation with the Painters Union or the IAM, established new terms and conditions of employment for employees represented by the Painters Union and the IAM.

43. Since on or about June 1, 1965, Respondent Thomas has, without notification to or consultation with the Painters Union or the IAM, established new terms and conditions of employment for employees represented by the Painters Union and the IAM.

44. Since May 1965, Respondent Ehlers, through its agent, Irving Graham, has negotiated terms and conditions of employment directly with individual employees in the units described in paragraphs 18 and 30 above, respectively.

45. Since May 1965, Respondent Thomas, through its agent, L. C. Coats, has negotiated terms and conditions of employment directly with individual employees in units described in paragraphs 19 and 31 above, respectively.

46. By the acts described in paragraphs 26, 28, 38, 40, 42, and 44 above, and by each of said acts, Respondent Ehlers did refuse to bargain collectively in good faith, and is refusing to bargain collectively in good faith, with the Painters Union and the IAM as the exclusive representatives of the employees in the appropriate units described in paragraphs 18 and 30 above, respectively, and did thereby engage in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(5) of the Act.

47. By the acts described in paragraphs 27, 29, 39, 41, 43, and 45 above, and by each of said acts, Respondent Thomas did refuse to bargain collectively in good faith, and is refusing to bargain collectively in good faith, with the Painters Union and the IAM as the exclusive representatives of the employees in the appropriate units described in paragraphs 19 and 31 above, respectively, and did thereby engage in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(5) of the Act.

48. By the acts described in paragraphs 26, 28, 38, 40, 42, 44, and 46 above, and by each of said acts, Respondent Ehlers did interfere with, restrain, and coerce, and is interfering with, restraining, and coercing, its employees in the exercise of the rights guaranteed in Section 7 of the Act, and did thereby engage in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.

49. By the acts described in paragraphs 27, 29, 39, 41, 43, 45, and 47 above, and by each of said acts, Respondent Thomas did interfere with, restrain, and coerce, and is interfering with, restraining, and coercing, its employees in the exercise of the rights guaranteed in Section 7 of the Act, and did thereby engage in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.

50. The acts of Respondent Ehlers described in paragraphs 26, 28, 38, 40, 42, 44, 46, and 48 above, occurring in connection with its operations described in paragraphs 3 and 4 above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states, and have led, and tend to lead, to labor disputes burdening and obstructing commerce and the free flow of commerce within the meaning of Section 2(6) and (7) of the Act.

51. The acts of Respondent Thomas described in paragraphs 27, 29, 39, 41, 43, 45, 47, and 49 above, occurring in connection with its operations described in paragraphs 5 and 6 above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states, and have lead, and tend to lead, to labor disputes burdening and obstructing commerce and the free flow of commerce within the meaning of Section 2(6) and (7) of the Act.

52. The acts and conduct of Respondent Ehlers described in paragraphs 26, 28, 38, 40, 42, 44, 46, 48, and 50 above, constitute unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

53. The acts and conduct of Respondent Thomas described in paragraphs 27, 29, 39, 41, 43, 45, 47, 49

and 51 above, constitute unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

PLEASE TAKE NOTICE that on the 23rd day of February 1966, at 10 a.m., PST, in Hearing Room #2 (Room 1759), 17th Floor, United States Court House, 312 North Spring Street, Los Angeles, California, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the above Consolidated Complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, Series 8, as amended, Respondents shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four copies of an answer to said Consolidated Complaint within 10 days from the service thereof and that unless they do so all of the allegations in the Consolidated Complaint shall be deemed to be admitted to be true and may be so found by the Board.

/s/ PAUL A. CASSADY,

Paul A. Cassady, Regional Director
National Labor Relations Board
Region 31
17th Floor, United States Court House
312 North Spring Street
Los Angeles, California 90012

Admitted in Evidence 2-23-66.

GENERAL COUNSEL'S EXHIBIT No. 1-S.

[Title of Board and Cause.]

ANSWER OF RESPONDENT
LOU EHLERS CADILLAC

LOU EHLERS CADILLAC (hereinafter called "Ehlers"), Respondent in Case No. 31-CA-83-3 and Case No. 31-CA-85-2, in answer to the consolidated complaint herein, pursuant to Section 102.20 of the Rules and Regulations, Series 8, of the National Labor Relations Board (hereinafter called "Board") [29 Fed. Reg. § 102.20], admits, denies, and alleges as follows:

I

Being without knowledge, denies each and every allegation in subparagraphs (a), (b), (e), and (f) of Paragraph 1, and paragraphs 5, 6, 11, 12, 19, 21, 23, 25, 27, 29, 31, 33, 35, 37, 39, 41, 43, 45, 47, 49, 51, and 53 (all relating to Thomas Cadillac, Inc., the Respondent in Case No. 31-CA-83-2 and Case No. 31-CA-84-2).

II

Admits the allegations of subparagraphs (c), (d), (g), and (h) of Paragraph 1.

III

Admits that General Motors Corporation, a Delaware corporation, under the name of Cadillac Motor Car Division (hereinafter called "Cadillac") prior to May 29, 1965 operated two retail Cadillac automobile sales and services establishments, to wit, one located at 5151 Wilshire Boulevard and one located at 1076 West Seventh Street, both in Los Angeles, California. Being without knowledge, denies each and every allegation in Paragraph 2 not herein expressly admitted.

IV

Admits that Respondent Ehlers is a California corporation, that it was incorporated on May 19, 1965, that at all material times from and after June 1, 1965 its offices and principal place of business has been located at 5151 Wilshire Boulevard, Los Angeles, California, and that at all material times from and after June 1, 1965 it has operated as an authorized Cadillac dealer for the retail sales and services of Cadillac motor vehicles at said location. Denies each and every other allegation in Subparagraph (a) of Paragraph 3 not herein expressly admitted.

V

Admits that effective as of June 1, 1965, Respondent Ehlers purchased from Cadillac a substantial portion of the physical assets (not including leasehold improvements) then owned and previously used by Cadillac in its operation at 5151 Wilshire Boulevard, Los Angeles, California and of the trade accounts receivable of Cadillac previously acquired in its operation at such location, Respondent Ehlers entered into a sublease with Cadillac of the premises located at 5151 Wilshire Boulevard, Los Angeles, California, and assumed the following liabilities only of Cadillac with reference to sales by Cadillac prior to June 1, 1965 from such location of Cadillac motor vehicles: unfilled retail orders, the payment of earned salesmen's commissions thereon, and warranties; that on May 29, 1965, Cadillac ceased to operate its establishment located at 5151 Wilshire Boulevard, and that from and after June 1, 1965 Respondent Ehlers has operated a Cadillac retail sales and service business located at 5151 Wilshire Boulevard. De-

denies each and every other allegation in Subparagraph (b) of Paragraph 3 not herein expressly admitted.

VI

Denies each and every allegation in Subparagraph (c) of Paragraph 3.

VII

Admits, as alleged in Subparagraph (d) of Paragraph 3, that Respondent Ehlers, in the course and conduct of its business operations, in the 12-month period ending June 1, 1966, will do a gross volume of business in excess of \$500,000 and will, during the same period, purchase and receive goods valued in excess of \$50,000 directly from suppliers located outside the State of California.

VIII

Admits, as alleged in Paragraph 4, that Respondent Ehlers is, and at all times material herein has been, an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the National Labor Relations Act, as amended (hereinafter called the "Act") [29 U.S.C. §§ 151-167].

IX

Admits, as alleged in Paragraph 7, that the International Association of Machinists, District Lodge 94, AFL-CIO (hereinafter called the "IAM") is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

X

Admits, as alleged in Paragraph 8, that Automotive, Marine, Production Finishers, Equipment Maintenance and Public Service Painters, Local Union 1798, Brother-

hood of Painters, Decorators and Paper Hangers of America, AFL-CIO (hereinafter called the "Painters Union") is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

XI

Admits that prior to May 29, 1965, Erving Graham was a foreman for Cadillac at its 5151 Wilshire Boulevard location, and from and after May 27, 1965 sometimes was an agent of Respondent Ehlers, acting on its behalf, within the meaning of Sections 2(2) and 2(13) of the Act. Denies each and every other allegation in Paragraph 9 not herein expressly admitted.

XII

Admits that from and after June 1, 1965 to August 6, 1965, Erving Graham occupied the position of service manager for Respondent Ehlers and during such period of time was a supervisor within the meaning of Section 2(11) of the Act and an agent of Respondent Ehlers. Denies each and every other allegation in Paragraph 10 not herein expressly admitted.

XIII

Being without knowledge, denies each and every allegation in Paragraph 13.

XIV

Being without knowledge, denies each and every allegation in Paragraph 14.

XV

Being without knowledge, denies each and every allegation in Paragraph 15.

XVI

Being without knowledge, denies each and every allegation in Paragraph 16.

XVII

Being without knowledge, denies each and every allegation in Paragraph 17.

XVIII

Denies each and every allegation in paragraph 18.

XIX

Denies each and every allegation in Paragraph 20, and denies that the IAM now represents, or at any time represented, a majority of Respondent Ehlers' employees in any unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act or that the IAM, by virtue of Section 9(a) of the Act, is now, or at any time has been, the exclusive representative for the purposes of collective bargaining of all of Respondent Ehlers' employees in any appropriate collective bargaining unit.

XX

Denies each and every allegation in Paragraph 22.

XXI

Denies each and every allegation in Paragraph 24. Alleges that on June 4, 1965 the IAM and on June 9, 1965 the Painters Union requested of Respondent Ehlers that it agree to arbitrate the asserted question of whether an alleged collective bargaining agreement between Cadillac and the IAM and the Painters Union was binding on Respondent Ehlers, Respondent Ehlers notified the IAM on or about June 8, 1965 and the

Painters Union on or about June 15, 1965 that it declined such requests. On June 28, 1965, the IAM and the Painters Union filed a joint action in the Superior Court of the State of California for the County of Los Angeles against Respondent Ehlers seeking an order requiring Respondent Ehlers to arbitrate under the arbitration clause of said alleged collective bargaining agreement questions of asserted violation of said agreement by Respondent Ehlers. Said action is still pending and undecided.

XXII

Admits that Respondent Ehlers has not at any time bargained collectively with respect to rates of pay, wages, hours of employment, or other terms or conditions of employment with the IAM as the alleged exclusive collective bargaining representative of any unit or group of its employees. Denies each and every other allegation in Paragraph 26 not herein expressly admitted.

XXIII

Admits that Respondent Ehlers at all times from and after June 1, 1965, and even before, has denied that the alleged collective bargaining agreement between Cadillac and the IAM and the Painters Union was binding on it and has not given any effect to the same. Denies each and every other allegation in Paragraph 28 not herein expressly admitted.

XXIV

Denies each and every allegation in Paragraph 30.

XXV

Denies each and every allegation in Paragraph 32, and denies that the Painters Union now represents, or

at any time represented, a majority of Respondent Ehlers' employees in any unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act or that the Painters Union, by virtue of Section 9(a) of the Act, is now, or at any time has been, the exclusive representative for the purposes of collective bargaining of all of Respondent Ehlers' employees in any appropriate collective bargaining unit.

XXVI

Denies each and every allegation in Paragraph 34.

XXVII

Denies each and every allegation in Paragraph 36. Alleges that on June 4, 1965 the IAM and on June 9, 1965 the Painters Union requested of Respondent Ehlers that it agree to arbitrate the asserted question of whether an alleged collective bargaining agreement between Cadillac and the IAM and the Painters Union was binding on Respondent Ehlers. Respondent Ehlers notified the IAM on or about June 8, 1965 and the Painters Union on or about June 15, 1965 that it declined such requests. On June 28, 1965 the IAM and the Painters Union filed a joint action in the Superior Court of the State of California for the County of Los Angeles against Respondent Ehlers seeking an order requiring Respondent Ehlers to arbitrate under the arbitration clause of said alleged collective bargaining agreement questions of asserted violation of said agreement by Respondent Ehlers. Said action is still pending and undecided.

XXVIII

Admits that Respondent Ehlers has not at any time bargained collectively with respect to rates of pay,

wages, hours of employment, or other terms or conditions of employment with the Painters Union as the alleged exclusive collective bargaining representative of any unit or group of its employees. Denies each and every other allegation in Paragraph 38 not herein expressly admitted.

XXIX

Admits that Respondent Ehlers at all times from and after June 1, 1965, and even before, has denied that the alleged collective bargaining agreement between Cadillac and the IAM and the Painters Union was binding on it and has not given any effect to the same. Denies each and every other allegation in Paragraph 40 not herein expressly admitted.

XXX

Admits that since on or about June 1, 1965 Respondent Ehlers has, without notification to or consultation with the Painters Union or the IAM, established the terms and conditions of employment for all its employees. Denies each and every other allegation in paragraph 42 not herein expressly admitted.

XXXI

Denies each and every allegation in Paragraph 44.

XXXII

Denies each and every allegation in Paragraph 46. Alleges that:

(a) Respondent Ehlers at all times from and after June 1, 1965 believed, and now believes, in good faith that neither the IAM nor the Painters Union nor both jointly (i) was at any time designated or selected by a majority of its employees in the alleged units, or either

of them, described in paragraphs 18 and 30 of the consolidated complaint, or in any unit of its employees appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act, as their representative for the purposes of collective bargaining or (ii) represented or represents a majority of Respondent Ehlers' employees in any such bargaining unit or (iii) by virtue of Section 9(a) of the Act, has been, or now is, the exclusive representative of all of its employees in any such bargaining unit with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

(b) To the extent the General Counsel of the Board asserts in his consolidated complaint that Respondent Ehlers is bound by the terms and provisions of the alleged collective bargaining agreement between Cadillac and the IAM and the Painters Union and has violated, or is now violating, Section 8(a)(5) or Section 8(a)(1) of the Act by failing or refusing to honor or give effect to such alleged agreement, such conduct constitutes solely a violation of contract which may be remedied by a court action on the contract (which the IAM and the Painters Union are, indeed, pursuing, as alleged above in paragraphs XXI and XXVII), does not constitute an unfair labor practice under the Act, and is not within the jurisdiction of the Board.

(c) Respondent Ehlers is not now, and has not at any time been, a party to any collective bargaining agreement between Cadillac and the IAM and the Painters Union, or either of them, and has not at any time assumed, or agreed to be bound by, any such contract. Any purported determination that Respondent Ehlers

is bound by any such contract, or any part thereof, would be unconstitutional as a disregarding of the doctrine of separation of powers, improper delegation of legislative powers, deprivation of Respondent Ehlers' property without due process of law, interference with its right to engage in business and the freedom and sanctity of contracts, in violation of Sections 1 and 8 of Article 1, and the Fifth and the Fourteenth Amendments of the United States Constitution and hence beyond the jurisdiction, power, or authority of the Board.

XXXIII

Denies each and every allegation in Paragraph 48.

XXXIV

Denies each and every allegation in Paragraph 50.

XXXV

Denies each and every allegation in Paragraph 52.

WHEREFORE, Respondent Ehlers prays that the General Counsel take nothing by reason of his consolidated complaint herein and that the same be dismissed at to this Respondent.

DATED: December 10, 1965.

/s/ RICHARD W. LUND
Richard W. Lund
of Latham & Watkins
615 South Flower Street
Los Angeles, California 90017
Attorneys for Respondent
Lou Ehlers Cadillac

State of California, County of Los Angeles—ss.

STATEMENT OF SERVICE

I, the undersigned, say: I am and was at all times herein mentioned a citizen of the United States and employed in the County of Los Angeles, over the age of eighteen years and not a party to the within proceeding; that my business address is 615 South Flower Street, Los Angeles, California, 90017; that on December 10, 1965, I served the Answer of Respondent Lou Ehlers Cadillac on the Other Parties in said proceeding by depositing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in a mail box or mail chute regularly maintained by the Government of the United States at 615 South Flower Street, in the City of Los Angeles, California, addressed to said Other Parties as follows:

International Association of
Machinists, District Lodge 94,
AFL-CIO

c/o Herbert M. Ansell, Esq.
Richman, Garrett & Ansell
1325 Wilshire Blvd.
Los Angeles, Calif. 90017

Local Union 1798, Brotherhood of
Painters, Decorators and Paper
Hangers of America, AFL-CIO

c/o Levy, DeRoy, Geffner,
Koszdin & Glow
1520 Wilshire Blvd.
Los Angeles, Calif. 90017

Thomas Cadillac, Inc.
c/o H. Burdette Fredricks, Esq.
Fredricks & Keslar
Suite 1014 Travelers Bldg.
3600 Wilshire Blvd.
Los Angeles, Calif. 90005

I certify under penalty of perjury that the foregoing is true and correct.

Executed on December 10, 1965 at Los Angeles, California.

BEE PARKYN
Bee Parkyn

Admitted in Evidence 2-23-66.

GENERAL COUNSEL'S EXHIBIT No. 1-T.

[Title of Board and Cause.]

ANSWER

COMES NOW the respondent THOMAS CADILLAC, INC., and in answer to the Complaint on file herein admits, alleges and denies as follows:

1

In answer to paragraph 1 (c) (d) (g) and (h) of the Complaint on file herein this answering respondent has no information or belief sufficient to enable it to answer said paragraph and basing its denial on said grounds generally and specifically denies each and every allegation or inference therefrom contained therein.

2

In answer to paragraph 2 of the Complaint on file herein this answering respondent admits that Cadillac Motor Car Division, General Motors Corporation, operated a retail sales and service dealership at 1076 West Seventh Street, Los Angeles, California; and except as so admitted this answering respondent has no information or belief sufficient to enable it to answer the remaining allegations contained in said paragraph and basing its denial on said grounds generally and specifically denies each and every allegation or inference therefrom contained therein.

3

In answer to paragraphs 3 (a) (b) (c) and (d) this answering respondent has no information or belief sufficient to enable it to answer said paragraphs and basing its denial on said grounds generally and specifically denies each and every allegation or inference therefrom contained therein.

4

In answer to paragraph 4 this answering respondent has no information or belief sufficient to enable it to answer said paragraph and basing its denial on said grounds generally and specifically denies each and every allegation or inference therefrom contained therein.

5

In answer to paragraphs 5 (b) and (c) this answering respondent generally and specifically denies each and every allegation or inference therefrom contained therein.

6

In answer to paragraph 5 (d) this answering respondent has no information or belief sufficient to enable it to answer said paragraph and basing its denial on said grounds generally and specifically denies each and every allegation or inference therefrom contained therein.

7

In answer to paragraphs 6, 7 and 8 this answering respondent generally and specifically denies each and every allegation or inference therefrom contained therein.

8

In answer to paragraphs 9 and 10 this answering respondent has no information or belief sufficient to enable it to answer said paragraphs and basing its denial on said grounds generally and specifically denies each and every allegation or inference therefrom contained therein.

9

In answer to paragraphs 13 and 14 this answering respondent generally and specifically denies each and every allegation or inference therefrom contained therein.

10

In answer to paragraphs 15, 16, 17 and 18 this answering respondent has no information or belief sufficient to enable it to answer said paragraphs and basing its denial on said grounds generally and specifically denies each and every allegation or inference therefrom contained therein.

11

In answer to paragraph 19 this answering respondent generally and specifically denies each and every allegation or inference therefrom contained therein.

12

In answer to paragraphs 20, 21, and 22 this answering respondent has no information or belief sufficient to enable it to answer said paragraphs and basing its denial on said grounds generally and specifically denies each and every allegation or inference therefrom contained therein.

13

In answer to paragraph 23 this answering respondent generally and specifically denies each and every allegation or inference therefrom contained therein.

14

In answer to paragraph 24 this answering respondent has no information or belief sufficient to enable it to answer said paragraph and basing its denial on said grounds generally and specifically denies each and every allegation of inference therefrom contained therein.

15

In answer to paragraph 25 this answering respondent generally and specifically denies each and every allegation or inference therefrom contained therein.

16

In answer to paragraph 26 this answering respondent has no information or belief sufficient to enable it to answer said paragraph and basing its denial on said grounds generally and specifically denies each and every allegation or inference therefrom contained therein.

17

In answer to paragraph 27 this answering respondent denies that the IAM is the exclusive collective-bargaining representative of its employees in the appropriate unit or an appropriate unit in the automotive sales and service industry and further denies that it is under any duty whatsoever to bargain with the IAM with respect to its employees.

18

In answer to paragraph 28 this answering respondent has no information or belief sufficient to enable it to answer said paragraph and basing its denial on said grounds generally and specifically denies each and every allegation or inference therefrom contained therein.

19

In answer to paragraph 29 this answering respondent alleges that it is under no duty whatsoever to honor or give effect to any collective-bargaining agreement between the IAM and General Motors Corporation.

20

In answer to paragraph 30 this answering respondent has no information or belief sufficient to enable it to answer said paragraph and basing its denial on said grounds generally and specifically denies each and every allegation or inference therefrom contained therein.

21

In answer to paragraph 31 this answering respondent generally and specifically denies each and every allegation or inference therefrom contained therein.

22

In answer to paragraph 32 this answering respondent has no information or belief sufficient to enable it to answer said paragraph and basing its denial on said grounds generally and specifically denies each and every allegation or inference therefrom contained therein.

23

In answer to paragraph 33 this answering respondent generally and specifically denies each and every allegation or inference therefrom contained therein.

24

In answer to paragraph 34 this answering respondent has no information or belief sufficient to enable it to answer said paragraph and basing its denial on said grounds generally and specifically denies each and every allegation or inference therefrom contained therein.

25

In answer to paragraph 35 this answering respondent denies that the Painters Union is the exclusive collective-bargaining representative of its employees in an appropriate unit.

26

In answer to paragraph 36 this answering respondent has no information or belief sufficient to enable it to answer said paragraph and basing its denial on said grounds generally and specifically denies each and every allegation or inference therefrom contained therein.

27

In answer to paragraph 37 this answering respondent denies that it is bound to honor or give effect to any

collective-bargaining agreement between the Painters Union and General Motors Corporation.

28

In answer to paragraph 38 this answering respondent has no information or belief sufficient to enable it to answer said paragraph and basing its denial on said grounds generally and specifically denies each and every allegation or inference therefrom contained therein.

29

In answer to paragraph 39 this answering respondent denies that the Painters Union is the exclusive collective-bargaining representative of its employees in an appropriate unit.

30

In answer to paragraph 40 this answering respondent has no information or belief sufficient to enable it to answer said paragraph and basing its denial on said grounds generally and specifically denies each and every allegation or inference therefrom contained therein.

31

In answer to paragraph 41 this answering respondent denies that it must honor or give effect to any collective-bargaining agreement between the Painters Union and General Motors Corporation.

32

In answer to paragraph 42 this answering respondent has no information or belief sufficient to enable it to answer said paragraph and basing its denial on said grounds generally and specifically denies each and every allegation or inference therefrom contained therein.

33

In answer to paragraph 43 this answering respondent generally and specifically denies that its employees are respresented by the Painters Union and the IAM.

34

In answer to paragraphs 44 and 46 this answering respondent has no information or belief sufficient to enable it to answer said paragraphs and basing its denial on said grounds generally and specifically denies each and every allegation or inference therefrom contained therein.

35

In answer to paragraph 47 this answering respondent generally and specifically denies each and every allegation or inference therefrom contained therein.

36

In answer to paragraph 48 this answering respondent has no information or belief sufficient to enable it to answer said paragraph and basing its denial on said grounds generally and specifically denies each and every allegation or inference therefrom contained therein.

37

In answer to paragraph 49 this answering respondent generally and specifically denies each and every allegation or inference therefrom contained therein.

38

In answer to paragraph 50 this answering respondent has no information or belief sufficient to enable it

to answer said paragraph and basing its denial on said grounds generally and specifically denies each and every allegation or inference therefrom contained therein.

39

In answer to paragraph 51 this answering respondent generally and specifically denies each and every allegation or inference therefrom contained therein.

40

In answer to paragraph 52 this answering respondent has no information or belief sufficient to enable it to answer said paragraph and basing its denial on said grounds generally and specifically denies each and every allegation or inference therefrom contained therein.

41

In answer to paragraph 53 this answering respondent generally and specifically denies each and every allegation or inference therefrom contained therein.

WHEREFORE, said respondent prays that the Complaint in the above entitled matter be dismissed and for such other and further relief as seems just and proper in the premises.

DATED this 9th day of December, 1965, at Los Angeles, California.

H. BURDETTE FREDRICKS
H. BURDETTE FREDRICKS
Attorney for Respondent
THOMAS CADILLAC, INC.

I hereby certify that a copy of the foregoing Answer has been served this day, by mail, upon the following:

Lou Ehlers Cadillac
5151 Wilshire Boulevard
Los Angeles, Calif. 90036

Richard W. Lund, Esquire
Latham & Watkins
615 S. Flower Street
Los Angeles, Calif. 90017

Thomas Cadillac, Inc.
1076 West 7th Street
Los Angeles, Calif. 90017

Local Union 1798, Brotherhood of
Painters, Decorators and Paper
Hangers of America, AFL-CIO
846 S. Union Avenue
Los Angeles, Calif. 90017

Levy, DeRoy, Geffner,
Roszdin & Glow
Suite 801, 1520 Wilshire,
Los Angeles, Calif. 90017

International Association
of Machinists, District
Lodge 94, AFL-CIO
214 So. Loma Drive
Los Angeles, Calif. 90026

Herbert M. Ansell, Esquire
Richman, Garrett & Ansell
1325 Wilshire Boulevard
Los Angeles, Calif. 90017

Dated this 9th day of December, 1965 at Los Angeles, California.

/s/ H. BURDETTE FREDRICKS
H. BURDETTE FREDRICKS
Attorney for Thomas
Cadillac, Inc.

Admitted in Evidence 2-23-66.

GENERAL COUNSEL'S EXHIBIT No. 1-U.

[Title of Board and Cause.]

MOTION OF
RESPONDENT LOU EHLERS CADILLAC
FOR SEVERANCE

Pursuant to Section 102.33 of the Rules and Regulations, Series 8, of the National Labor Relations Board (hereinafter called the "Board"), [29 Code Fed. Reg. § 102.33], LOU EHLERS CADILLAC (hereinafter called "Ehlers"), Respondent in Case No. 31-CA-83-3 and Case No. 31-CA-85-2, hereby moves that the hearing and all other proceedings in this matter in Case No. 31-CA-83-3 and Case No. 31-CA-85-2 be severed from those in Case No. 31-CA-83-2 and Case No. 31-CA-84-2 involving Thomas Cadillac, Inc. (hereinafter called "Thomas"), the Respondent in such latter cases. This motion is made upon the following grounds:

1. The facts and evidence concerning Respondent Ehlers and those concerning Respondent Thomas are for the most part completely unrelated.
2. In this respect, the complaint contains 53 paragraphs. Of these, 22 and half of one other pertain

solely to Respondent Thomas, the same number of paragraphs pertain solely to Respondent Ehlers, and only 8 paragraphs allegedly pertain to both Respondent Ehlers and Respondent Thomas. Thus, only 15 per cent of the paragraphs contain what may be said to be common allegations. Except with respect to such allegations, Respondent Ehlers has no interest in any of the allegations concerning Respondent Thomas, and vice versa.

3. Even with respect to the common allegations, Respondents Ehlers and Thomas may have inconsistent or adverse positions.

4. Respondent Ehlers would have to have its counsel and possible witnesses attend the hearing while evidence was presented solely pertaining to Respondent Thomas. This would involve Respondent Ehlers in excessive and unwarranted expense for attorneys' fees, transcript and other costs concerning a large part of the consolidated proceedings which does not concern it.

5. Respondent Ehlers' counsel sincerely believes Respondent has not violated the Act and has a good defense to the charges. It would be unfair to impose additional unnecessary costs on this Respondent in defending itself.

6. Thus, the severance is necessary to avoid unnecessary costs to an innocent Respondent.

7. Nor will the severance prejudice the General Counsel of the Board or the Charging Parties. It is probable that the counsel in the case to be heard second would stipulate to reception of the record presented in the first case with reference to the common allegations. But even if such stipulation is not forthcoming, there will be no delay caused by the severance. If there are

two separate trial examiners, the processing actually would be expedited. But even if the same trial examiner were used for both cases, he can be studying the one case while hearing the other. The fact that the records are separate will not delay his consideration and decision in both cases at all.

8. In addition to different evidence involved in each case, it is believed there are also different questions of law presented.

9. Counsel for the Charging Parties were fully aware that each case was really different. Hence, the charges filed did not combine Ehlers and Thomas as respondents in the same charge.

10. Accordingly, there is no basis for concluding that it would effectuate the purposes of the Act to have the cases consolidated, and such consolidation unwarrantedly prejudices this Respondent.

WHEREFORE, Respondent Ehlers prays that this motion be granted and that an order be entered severing Case No. 31-CA-83-3 and Case No. 31-CA-85-2 from Case No. 31-CA-83-2 and Case No. 31-CA-84-2 for purposes of the hearing and for all other purposes.

DATED: December 10, 1965.

Respectfully submitted,

LATHAM & WATKINS

/s/ By R. W. LUND

R. W. Lund

615 South Flower Street

Los Angeles, California 90017

Attorneys for Respondent

Lou Ehlers Cadillac

State of California, County of Los Angeles—ss.

STATEMENT OF SERVICE

I, the undersigned, say: I am and was at all times herein mentioned a citizen of the United States and employed in the County of Los Angeles, over the age of eighteen years and not a party to the within proceeding; that my business address is 615 South Flower Street, Los Angeles, California, 90017; that on December 10, 1965, I served the Motion of Respondent Lou Ehlers Cadillac for Severance on the Other Parties in said proceeding by depositing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in a mail box or mail chute regularly maintained by the Government of the United States at 615 South Flower Street, in the City of Los Angeles, California, addressed to said Other Parties as follows:

International Association of
Machinists, District Lodge 94,
AFL-CIO

c/o Herbert M. Ansell, Esq.
Richman, Garrett & Ansell
1325 Wilshire Blvd.
Los Angeles, Calif. 90017

Local Union 1798, Brotherhood of
Painters, Decorators and Paper
Hangers of America, AFL-CIO

c/o Levy, DeRoy, Geffner,
Koszdin & Glow
1520 Wilshire Blvd.
Los Angeles, Calif. 90017

Thomas Cadillac, Inc.
c/o H. Burdette Fredricks, Esq.
Fredricks & Keslar
Suite 1014 Travelers Bldg.
3600 Wilshire Blvd.
Los Angeles, Calif. 90005

I certify under penalty of perjury that the foregoing is true and correct.

Executed on December 10, 1965 at Los Angeles, California.

BEE PARKYN
Bee Parkyn

Admitted in Evidence 2-23-66.

GENERAL COUNSEL'S EXHIBIT No. 1-V.

[Title of Board and Cause.]

MOTION FOR SEVERENCE

COMES NOW the respondent THOMAS CADILLAC, INC., and pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board, as amended, hereby makes its Motion to sever cases Nos. 31-CA-83-2 and 31-CA-84-2 (wherein Thomas Cadillac, Inc. is respondent) from cases Nos. 31-CA-83-3 and 31-CA-85-2 (wherein Lou Ehlers Cadillac is respondent), on the following grounds:

1

That the Complaint on file herein consisting of 53 paragraphs contains allegations with respect to this moving respondent and respondent Lou Ehlers Cadil-

lac wherein the vast majority of said allegations are unrelated as to both respondents.

2

That the factual situations as to the said respondents are different and the bulk of the factual issues to be resolved do not appear to apply to both respondents.

3

That to try both cases on a consolidated basis would of necessity create unnecessary costs and delay for each respondent as each respondent along with its witnesses and attorneys would of necessity have to be present at the hearing when the testimony with respect to one respondent would have no relation whatsoever to the testimony with respect to the other respondent.

WHEREFORE respondent Thomas Cadillac, Inc., respectfully prays that the Regional Director shall refer this Motion to the Trial Examiner for ruling and that the Trial Examiner make a ruling severing the two cases so that each case may be tried on its own grounds and on its own merits.

Respectfully Submitted

H. BURDETTE FREDRICKS

H. BURDETTE FREDRICKS

Attorney for Thomas

Cadillac, Inc.

I hereby certify that a copy of the foregoing Motion For Severance has been served this day, by mail, upon the following:

Lou Ehlers Cadillac

5151 Wilshire Boulevard

Los Angeles, Calif. 90036

Richard W. Lund, Esquire
Latham & Watkins
615 S. Flower Street
Los Angeles, California 90017

Thomas Cadillac, Inc.,
1076 West 7th Street
Los Angeles, Calif. 90017

Local Union 1798, Brotherhood of
Painters, Decorators and Paper
Hangers of America, AFL-CIO
846 S. Union Avenue
Los Angeles, California 90017

Levy, DeRoy, Geffner,
Roszdin & Glow
Suite 801, 1529 Wilshire,
Los Angeles, Calif. 90017

International Association
of Machinists, District
Lodge 94, AFL-CIO
214 So. Loma Drive
Los Angeles, Calif. 90026

Herbert M. Ansell, Esquire
Richman, Garrett & Ansell
1325 Wilshire Boulevard
Los Angeles, Calif. 90017

DATED this 9th day of December, 1965 at Los
Angeles, California.

/s/ H. BURDETTE FREDRICKS
H. BURDETTE FREDRICKS
-Attorney for Thomas
Cadillac, Inc.

Admitted in Evidence 2-23-66.

GENERAL COUNSEL'S EXHIBIT No. 1-W.

[Title of Board and Cause.]

To the Honorable Wallace E. Royster, Associate
Chief Trial Examiner

MEMORANDUM IN OPPOSITION TO RE-
SPONDENT THOMAS CADILLAC, INC.'S
AND RESPONDENT LOU EHLERS CAD-
ILLAC'S MOTIONS FOR SEVERANCE

Respondent Thomas Cadillac, Inc.'s and Respondent
Lou Ehlers Cadillac's motions for severance should be
denied on the following grounds:

1. The alleged unfair labor practices herein involv-
ing both Respondent Thomas and Respondent Ehlers
arose from the same transaction or series of transac-
tions, and involve identical issues of law and substan-
tially similar issues of fact.

The theory of successorship in the case of both Re-
spondents is based on well-established Board precedent.
E.g., Maintenance, Inc., 148 NLRB 1299. The theory
of the continued validity of the collective-bargaining
agreement herein in the case of both Respondents is
based on the doctrine of *John Wiley & Sons, Inc. v.*
Livingston, 376 U.S. 343, and cases decided thereunder.
The theories underlying the allegations of unilateral in-
stitution of benefits and individual bargaining in the
case of both Respondents are based on well-established
Board precedent. E.g., *Witham Buick*, 139 NLRB 1209
and *Chemrock Corp.*, 151 NLRB No. 111.

Inasmuch as both Respondents herein are alleged to
be successors of the same business enterprise, much of
the evidence will concern their common predecessor,

particularly with respect to the similarity of the personnel, physical plant, and mode of operation between Respondents and the said predecessor. Identical considerations are involved in the issues of fact surrounding the contract continuity issue.

2. Section 102.33 of the Board's Rules and Regulations, Series 8, as amended, provides in pertinent part:

Whenever the general counsel deems it necessary in order to effectuate the purposes of the act or to avoid unnecessary costs or delay, he may . . . order that such charge and any proceeding . . .:

* * * * *

(b) Be consolidated with any other proceeding which may have been instituted in the same region;

Consolidation is a matter within the administrative discretion of the General Counsel. An objection to consolidation cannot be successfully maintained unless it can be shown that the General Counsel has arbitrarily abused his discretion. *Overnite Transportation Company*, 130 NLRB 1020, 1022; cf. *Seamprufe, Inc.*, 82 NLRB 892, enfd. 186 F. 2d 671 (C.A. 10); see also *Bill Daniels, Inc.*, 96 NLRB 1255 and *Jefferson Lincoln Mercury, Inc.*, 90 NLRB 1911.

In the instant case, in view of the similarity of the issues of law and fact between the cases of both Respondents, ample basis exists for the consolidation from the standpoint of efficient and expeditious administration of the Act, and severance is not warranted.

388 *International Assn. of Machinists, etc. vs.*

WHEREFORE, the General Counsel prays that the
aforementioned motions for severance be denied.

DATED at Los Angeles, California, this 20th day of
December 1965.

/s/ GEORGE A. PAPPY

George A. Pappy

Counsel for the General Counsel

National Labor Relations Board

Admitted in Evidence 2-23-66.

GENERAL COUNSEL'S EXHIBIT No. 1-X.

[Title of Board and Cause.]

ORDER

Motions of Respondents Thomas Cadillac, Inc. and
Lou Ehlers Cadillac for severance, having been lodged
with the undersigned on December 9, 1965 and De-
cember 13, 1965, respectively.

IT IS HEREBY ORDERED, in accordance with
Section 102.33 of the Board's Rules and Regulations,
Series 8, as amended, that the same be and they here-
by are referred to the Associate Chief Trial Examiner,
National Labor Relations Board, San Francisco, Cali-
fornia, for ruling.

DATED at Los Angeles, California, this 20th day
of December 1965.

/s/ PAUL A. CASSADY,

Paul A. Cassady, Regional Director

National Labor Relations Board

Region 31

Admitted in Evidence 2-23-66.

GENERAL COUNSEL'S EXHIBIT No. 1-Z.

[Title of Board and Cause.]

RULING ON MOTIONS FOR SEVERANCE

Motions of Respondents Thomas Cadillac, Inc., and Lou Ehlers Cadillac for severance of cases for the purpose of hearing having been filed with the Regional Director for the Thirty-first Region of the Board on December 9, 1965, and December 13, 1965, respectively; said motions having been referred to the Associate Chief Trial Examiner in San Francisco, California, for ruling, on December 21, 1965, and said Motions having been assigned to the undersigned Trial Examiner for ruling; the undersigned having considered said Motions, the memorandum of opposition thereto filed by Counsel for the General Counsel, and all the pleadings herein, finds that there is a basis for joinder of cases for hearing and that the order of proof, to cause the least inconvenience to the parties and to make the most economical use of time, can best be regulated by the trial Examiner conducting the hearing herein. Therefore Respondents' Motions for Severance are hereby denied.

/s/ JAMES R. HEMINGWAY

James R. Hemingway
Trial Examiner

Dated: January 18, 1966.

Admitted in Evidence 2-23-66.

GENERAL COUNSEL'S EXHIBIT No. 1-Z-3.

[Title of Board and Cause.]

AMENDMENT TO ANSWER OF
RESPONDENT LOU EHLERS CADILLAC

LOU EHLERS CADILLAC (hereinafter called "Ehlers"), Respondent in Case No. 31-CA-83-3 and Case No. 31-CA-85-2, hereby amends subparagraph (b) of Paragraph XXXII of its Answer to the consolidated complaint herein, dated December 10, 1965, to read as follows:

(b) The conduct of Respondent Ehlers alleged to be in violation of Section 8(a)(5) and/or Section 8(a)(1) of the Act constitutes solely a violation of the collective bargaining agreement of December 1, 1964 between Cadillac and the IAM and the Painters Union, if Respondent Ehlers was and is bound by the terms and provisions thereof, and such violation may be remedied only by a court action on the contract (which the IAM and the Painters Union are, indeed, pursuing, as alleged above in paragraphs XXI and XXVII), does not constitute an unfair labor practice under the Act, and is not within the jurisdiction of the Board.

WHEREFORE, Respondent Ehlers prays that the General Counsel take nothing by reason of his consolidated complaint herein and that the same be dismissed as to this Respondent.

DATED: February 23, 1966.

/s/ RICHARD W. LUND
Richard W. Lund
of LATHAM & WATKINS
615 South Flower Street
Los Angeles, California 90017
Attorneys for Respondent Lou
Ehlers Cadillac

Admitted in Evidence 2-23-66.

GENERAL COUNSEL'S EXHIBIT 1-Z-4.

[Title of Board and Cause.]

AMENDMENT TO ANSWER OF
RESPONDENT THOMAS CADILLAC, INC.

THOMAS CADILLAC, INC. (hereinafter called "Thomas"), Respondent in Case No. 31-CA-83-2 and Case No. 31-CA-84-2, hereby amends paragraph 35 of its Answer to the Consolidated Complaint herein dated December 10, 1965, to read as follows:

35. (a) In answer to paragraph 47 this answering defendant generally and specifically denies each and every allegation, or inference therefrom, contained therein.

(b) The conduct of Respondent Thomas alleged to be in violation 8(a)(5) and/or Section 8(a)(1) of the Act constitutes solely a violation of the alleged collective bargaining agreement of December 1, 1964 be-

tween Cadillac Motor Car Division of General Motors Corporation and the International Association of Machinists and the Painters Union, if Respondent Thomas was and is bound by the terms and provisions thereof, and such violation may be remedied only by a court action on the contract (which the International Association of Machinists and the Painters Union are pursuing, in the Superior Court of the State of California in and for the County of Los Angeles) does not constitute an unfair labor practice under the Act, and is not within the jurisdiction of the National Labor Relations Board.

WHEREFORE, Respondent Thomas prays that the General Counsel take nothing by reason of his consolidated complaint herein and that the same be dismissed as to this Respondent.

Dated: February 24, 1966.

/s/ H. BURDETTE FREDRICKS,
H. Burdette Fredricks,
3600 Wilshire Blvd., Suite 1014,
Los Angeles, Calif. 90005
Attorney for Respondent
Thomas Cadillac, Inc.

Admitted in Evidence 2-23-66.

GENERAL COUNSEL'S EXHIBIT No. GC-2.

Superior Court of the State of California
for the County of Los Angeles.

In the Matter of the Petition of Herbert A. Cooksey,
etc., et al., Petitioners, vs. Cadillac Motor Car Division
of General Motors Corp., Lou Ehlers, etc., et al., Re-
spondents. No. 863,284.

DEPOSITION of ERVING GRAHAM,

taken at 1325 Wilshire Boulevard, Los Angeles, Cali-
fornia, at 2:45 o'clock p.m., on Friday, September 10,
1965, before MARK T. NEVILL, CSR, Notary Pub-
lic. [1]*

Appearances of Counsel:

For the Petitioners: Richman, Garrett & Ansell, by:
Herbert M. Ansell, 1325 Wilshire Boulevard, Los An-
geles, California.

For the Respondent Lou Ehlers Cadillac: Latham &
Watkins, by: Richard W. Lund, 615 South Flower
Street, Los Angeles, California.

For the Respondent Cadillac Motor Car Division of
General Motors Corporation: Lawler, Felix & Hall, by:
Richard D. DeLuce, 605 West Olympic Boulevard, Los
Angeles, California. [2]

ERVING GRAHAM,

having been first duly sworn, deposed and testified as
follows:

Examination

By Mr. Ansell:

Q. Mr. Graham, have you ever had your deposition
taken before? A. Yes.

*Page numbers appearing at top of page of Deposition.

(Deposition of Erving Graham.)

Q. Has your counsel, Mr. Lund, explained to you the nature of this proceeding here today?

A. Yes.

Q. And you understand that this deposition is being taken as part of this lawsuit entitled Petition of Herbert

A. Cooksey against Cadillac and Lou Ehlers Cadillac, Case No. 863,284. Do you understand?

A. Yes.

Q. If there are any questions that I ask that are vague or unclear to you in any, just ask me to repeat or rephrase them and I will.

Now, I understand from your declaration that you were employed by Cadillac since 1952; is that right?

A. That's right.

Q. And you worked as a mechanic at the Seventh and Bixel branch until 1959?

A. No, until 1956 I worked as a mechanic. [3]

Q. I am sorry. Then you became a shop foreman at the Seventh and Bixel branch?

A. That is right.

Q. And then in 1959 you were transferred to the 5151 Wilshire Boulevard branch?

A. That is right.

Q. You worked there as a shop foreman?

A. That's right.

Q. And you remained in that capacity until May 28, 1965?

A. That's right.

Q. What were your duties as shop foreman?

A. Duties as shop foreman was to distribute the work evenly, to supervise the mechanics and pertaining to each job in the way of going about how to repair it

(Deposition of Erving Graham.)

at the least expense to the owner and the Cadillac Motor Car Division.

Q. Who was the top ranking supervisor of the shop division, of the shop department, just prior to the take-over on May 28, 1965?

A. That would be Mr. Walter Baesemann.

Q. Walter who?

A. Walter Baesemann. Baesemann.

Q. Baesemann? A. Baesemann.

Q. Did he do the hiring? [4]

A. Primarily, yes, he did the hiring.

Q. Were the shop employees, at least the mechanics, assigned to particular physical locations? Were they each given a stall, so to speak?

A. Yes, they were.

Q. Let me ask you this: Was it always the case that the mechanics would do just one type of specialty or did that ever change? Did they ever do something else?

A. Yes, they have done other things.

Q. Can you give me an example of when a mechanic might step out of a specialty somewhat and handle something else? A. Yes.

Mr. Lund: You are talking about before June 1st?

Mr. Ansell: Yes. I am talking about before June 1.

Q. You would have a brakeman and primarily he was a brakeman, but he could fill in as a front-end man, this would be done on occasion?

A. That would be done on occasion.

Q. When the need would arise?

A. When the overflow of work was there or when someone was sick, that original front-end man was sick or off.

(Deposition of Erving Graham.)

Q. Can you think of other examples that come to mind?

A. Yes. An air conditioning specialist would also [5] do rattles and electrical work at times.

Q. When you say rattles, you mean rattles in the body frame? A. Yes, that's right.

Q. To your knowledge, when employees were hired by General Motors prior to May 28, 1965, did the management seem to look for people that could do more than one specific thing, so far as you could tell?

Was this considered an asset to the company?

A. It was an asset, but it wasn't stressed.

Q. It wasn't stressed. All right. It is, I assume, just Cadillac automobiles that are sold at 5151 Wilshire; is that correct? A. That's right.

Q. No other brand of car is sold?

A. No, not within the new car field. There is sometimes in the used car field.

Q. What might be handled in the used car field?

A. Well, just the odd lot of trade-ins.

Q. I see. Something you will get in exchange for a Cadillac?

A. That's right. Primarily it's Cadillac, period.

Q. That was the situation, too, prior to June 1, 1965? A. That is right.

Q. Occasionally? [6]

A. Occasionally they would get in a Lincoln or Chevrolet.

Q. And sell it? A. That's right.

Q. Or try to? A. Yes, that's right.

Q. Prior to June 1, 1965 were there meetings held on occasion between shop supervisors and the shop employees?

(Deposition of Erving Graham.)

When I say "shop," I mean in the real broad sense, everybody in service and maintenance, parts, new car get-ready, and so forth?

A. Yes, there was. Of course, it goes back a long ways.

Q. There were meetings from time to time?

A. Yes.

Q. Do you recall attending meetings yourself?

A. Uh-huh.

Q. You will have to try to answer yes or no.

A. Yes.

Q. Do you recall that at least at some of the meetings that you attended prior to June 1 that general morale subjects would be discussed if there was some complaint about the employees in general, that this might be brought up, matters of service and related matters might be discussed?

A. To a certain extent. Of course, I would have to [7] say the meetings were primarily for supervision personnel only, as a rule.

Q. Meetings among the supervisors themselves?

A. That's right, and the service supervisors.

Q. You did attend some meetings where all the employees participated, did you not?

A. Quite some time ago, yes. Yes, quite some time ago.

Q. When you say quite some time ago, what do you mean?

A. Oh, approximately maybe five years or so.

Q. Five years? A. Yes.

Q. Are you saying that you don't recall attending any employee meeting within the last five years?

(Deposition of Erving Graham.)

Mr. DeLuce: When you say employee, not the kind that he has been talking about previously, of supervisors?

Mr. Ansell: No.

Mr. DeLuce: All employees?

Mr. Ansell: I mean rank and file.

Mr. Lund: Nonsupervisory personnel.

Mr. Ansell: That is right.

Mr. Lund: Shop personnel.

The Witness: Well, the only way I can phrase it, we had some spot meetings with them, five or six minutes, just to get over one point. [8]

Mr. Ansell: Q. You mean you would call the non-supervisory shop employees together and have a discussion about something that had come up?

A. That's right.

Q. These would occur from time to time?

A. Yes.

Q. Do you recall Mr. Baesemann ever addressing the employees on these occasions? A. Oh, yes.

Q. Did Cadillac have a pick-up and delivery service — A. Yes.

Q. —at 5151? A. Yes.

Q. Did Cadillac have employee personnel solely for the purpose of pick-up and delivery, where these people did nothing at all other than that or, conversely, would they use people that would do other things and use them in pick-up and delivery when the need arose?

A. Well, I would have to say they employed four that was almost a full-time job for them to pick up and deliver cars. They on occasion used them for what we call car attendants.

(Deposition of Erving Graham.)

Q. What is a car attendant?

A. They are primarily for picking up and delivering cars.

Q. You no longer have a pick-up and delivery service? [9] A. No.

Q. How many people do you have employed for the purpose of moving the cars around the building now since June 1?

A. Truthfully, I couldn't say because I am no longer employed there.

Q. Well, when was it that you left their employ?

A. At the time I was employed there we had two temporary car attendants.

Q. You are working in the automotive field yourself now, incidentally?

A. Not as of now, no.

Q. You have heard mention of, I think, a supplemental list. You heard Mr. Ehlers talk about that this morning. A. Yes.

Q. Do you recall ever seeing some type of a list revising the rates to be paid to the shop employees while you were there, prior to June 1, 1965? A. Yes.

Q. Would there be changes as to all classifications or would there just be for certain things like waxing and polishing?

A. No, it would be added operations that wasn't allowed for in the suggested flat-rate operations put out by the factory. [10]

Q. Can you give us an example of what you mean by added operations?

A. Yes. An example would be the factory puts out no specific time to remove a rattle from a dash area or

(Deposition of Erving Graham.)

from the rear part of a car, so they made up a supplemental operation and called it an S number such as S-109, remove a rattle in the rear area of the car, which paid the mechanic so much an hour.

Q. In the period of time you were at 5151 Wilshire Boulevard, which was 1956— A. '59.

Q. Excuse me. Yes, 1959, that is right.—until the take-over by Ehlers, how many different revisions do you recall coming up on the supplemental lists?

A. Well, it was revised once, but the list was originally made in 1957.

Q. That is the so-called supplemental list?

A. That is right. Originally it was made in 1957 and was revised at the last union negotiation meeting.

Q. You mean 1964? A. And approved.

Q. 1964? A. I believe so. Yes.

Q. Then there were no further revisions thereafter? A. No.

Q. Was there a nightshift prior to June 1? [11]

A. No, there wasn't.

Q. Not at all for maintenance? A. No.

Q. Who would do the road checking of vehicles prior to June 1? What was the policy on road checking?

A. The policy on road checking was the service salesman's responsibility or service advisor's. They are both the same.

Q. Would he road check the vehicles himself personally?

A. Yes. He was designated to do it, anyway.

Mr. Lund: Keep your voice up.

Mr. Ansell: Q. In practice did the individual mechanics ever road check vehicles that they worked on?



APPENDIX OF THE PARTIES.

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21,972

484

INTERNATIONAL ASSOCIATION OF MACHINISTS,
DISTRICT LODGE 94, AFL-CIO; and AUTOMOTIVE
MARINE, PRODUCTION FINISHERS, EQUIPMENT,
MAINTENANCE AND PUBLIC SERVICE PAINTERS
LOCAL UNION 1798, BROTHERHOOD OF PAINTERS,
DECORATORS AND PAPERHANGERS OF AMERICA,
AFL-CIO,

Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent,

THOMAS CADILLAC, INC., and LOU EHLERS CAD-
ILLAC,

Intervenors.

Volume II of 3 Volumes.

United States Court of Appeals
for the District of Columbia

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HERBERT M. ANSELL,
1336 Wilshire Boulevard,
Los Angeles, California 90017,

ABE LEVY,
1520 Wilshire Boulevard,
Los Angeles, California 90017,

PLATO E. PAPPS,
1300 Connecticut Avenue,
Washington, D. C.,

Attorneys for Petitioners.

Nathan J. Sauer
CLERK

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(Deposition of Erving Graham.)

A. Certain ones did. It depends upon the type of jobs. The ones that worked on rattle work primarily had to road test the car to do the job or attempt to do the job properly.

Q. How about the larger jobs like transmission, transmission work?

A. After completion they did, but they were paid for it.

Q. On what basis were they paid, do you recall?

A. They had a flat rate of one-half—paid one-half hour.

Q. In other words, just add a half hour to the [12] allowance on the job; is that right?

A. That's right.

Q. It added in all cases or if they, in fact, road tested the car?

A. If they, in fact, road tested the car.

Mr. Lund: Just as a matter of curiosity, is this one of these supplemental rates?

The Witness: Yes, it is.

Mr. Ansell: Q. Would it be up to the man himself to note down some place whether he road tested a car?

A. No, it wouldn't be.

Q. Who would make the note so that he would get his extra half hour? A. The shop foreman.

Q. Would the man report to him that he had road checked a car?

A. As a rule, the shop foreman would generally know it because he would miss the man. He knows about what he has done with the job, if the man is not in his stall and the car is not there, it just falls in line that he knows he is out road testing it, and generally a

(Deposition of Erving Graham.)

hydramatic man will always road test a completed job. That's where you get your final adjustments.

Q. Prior to June the 1st would a service and maintenance person who was being paid on a time-allowance basis like a mechanic, for instance, note down some place [13] how much time he had actually spent on a job?

A. No. That was all clocked time. They clocked in and out every job.

Q. How would this work physically when you say clocked out? What is it he would clock? It would be the car he was giving—

A. Timecard.

Q. Timecard?

A. That always shows up on the back of the repair order, the actual time he spent on a job.

Q. Who would put the notation on the repair order?

A. The mechanic would paste it on the repair order himself. It's a sticker, removable sticker. On each operation you tear off a segment of the repair order and paste it right on the back of the hard copy.

Q. Who would put in the time that was on the back of the repair order?

A. The mechanic would put in the time and the foreman would okay the time. It would have to be okayed before it was taken off.

Q. Then, in addition to writing down his time, he would punch a clock?

A. That's right.

Q. Was that procedure followed subsequent to June the 1st?

A. Yes. [14]

Q. I am sorry. I am going to have to ask you again. What was the date that you actually left the employ of the Cadillac agency?

(Deposition of Erving Graham.)

Mr. Lund: You mean Lou Ehlers?

Mr. Ansell: Q. Lou Ehlers.

A. It was August 6.

Q. As of August 6, when you left, what recollection do you have as to major pieces of equipment that had been purchased since June the 1st for use in the shop?

A. A big floor scrubber, water vacuum sucker, I guess, and a water vacuum tank, yard vacuum machine. That's about it.

Q. That's about it. Let me ask you this: Had there been a floor scrubber at the premises prior to June the 1st?

A. No, there wasn't.

Q. This you use strictly for maintenance work now?

A. That's right.

Q. Do they have some kind of a substitute that they use for maintenance? Was there something like that that was used by the Cadillac people?

A. The Cadillac people had an agency come in and do it.

Q. They had an outside maintenance crew that came in?

A. An outside maintenance crew came in, yes. They [15] subleased that part of it and they furnished their own equipment.

Q. Do you know what kind of equipment the maintenance crew used?

A. No, I have no idea.

Q. Was there a water vacuum tank prior to the purchase of this?

A. No, there wasn't.

Q. What is the water vacuum tank used for?

A. It's used to absorb the water from the scrubbing machine so you wouldn't have to have as much manpower to go behind with mops.

(Deposition of Erving Graham.)

Q. It is also part of the maintenance operation?

A. That's right.

Q. How about the yard vacuum machine, what is that used for?

A. That's to vacuum up all papers and debris around the building and the parking lot.

Q. Again, this is part of maintenance?

A. That's right. All maintenance.

Q. Are these the only pieces of major equipment you can recall having been purchased?

A. That's right.

Q. Do I understand correctly that the average working day was 8:00 in the morning until 4:30 in the afternoon for the shop people? [16]

A. That's right.

Q. Did the maintenance people, the service and maintenance people, I mean the service and maintenance employees working in the shop ever remain after 4:30 to complete a job?

A. At times they did, yes.

Q. From your own personal experience do you ever recall a man staying for 30 to 60 minutes?

A. Yes, I have.

Q. Incidentally, do you have a recollection yourself at this time whether the hourly rates allowed by the agency, you know, for a particular job, not the amount of hours, not the time allowance, but the amount of money paid per hour, whether that in general changed from what it was when Cadillac operated the premises?

A. Yes, it did.

Q. Was it generally an increased amount?

A. It was an increase, yes.

Q. Do you recall whether some type of health insurance plan was in effect after June 1st?

(Deposition of Erving Graham.)

A. Not until approximately three weeks, four weeks later.

Q. About three or four weeks later some type of plan went into effect.

Do you recall generally whether it was completely financed by the employer or in part or whether the employees [17] contributed? A. Part and part.

Q. Part and part? A. Yes.

Q. In other words, just so the record is clear, the management would put in so much and the employee so much, and deducted from the employee's check; is that correct? A. That's right.

Q. Do you recall any policy being established on or after June the 1st concerning holidays, paid holidays?

A. Yes, there's a policy. They would have their paid holidays at your hourly rate, paid at your hourly rate for eight hours, on the basis of eight hours a day.

Q. How would this work in connection with mechanics who are paid by—

A. The mechanics have an hourly rate.

Q. You mean that each specialized type of mechanic has a certain amount of money per hour?

A. All mechanics are on the same hourly rate. They are all in the same, except lubricators and polishers, which are a little bit lower.

Q. I am curious about one thing. Are they paid the hourly rate as opposed, as against the labor allowance, whichever comes out higher, or how does that work? Under [18] what circumstances did they get an hourly rate?

A. They would get it under—let's say there wasn't enough work for them to do. Let's say they sat around

(Deposition of Erving Graham.)

or they haven't put in 40 hours a week; they only put in approximately 36 hours. Well, they would get the remaining four hours on their hourly pay scale.

Q. I see. A. Made up to them.

Q. So that such an employee working 36 hours would be paid, during the period of time that he worked—he would be paid in accordance with the time allowance on the number of jobs he did. The amount of money he got depended on the number of jobs and the type of jobs he was doing?

A. That is right.

Q. In addition to that, if he was four hours shy, where he had to work, he would draw a certain prescribed hourly scale on that; is that right?

A. Yes.

Q. And prior to June the 1st was that the situation also? Was there an hourly rate for the mechanics?

A. Yes.

Q. Do you recall at this time whether the number of holidays allowable were changed from what it was, from what the policy was just prior to June the 1st, whether there was a decrease or an increase or the same? [19]

A. I would have to say there would be a decrease.

Q. Do you know whether on or after June 1st there was some policy established with regard to the vacations of the employees? A. Yes, there was.

Q. Do you recall what that policy was?

A. All employees that were hired in as of June 1st would get two weeks after one year of service.

Q. Two weeks after one year? A. Yes.

(Deposition of Erving Graham.)

Q. Then, when would it change to three weeks? What was the breaking point?

Mr. Lund: What a minute. That assumes a fact not in evidence.

Mr. Ansell: Let me withdraw it.

Q. Was there a point at which an employee would get a third week of vacation, if you know?

A. That I don't know.

Q. Incidentally, what is your present address?

A. 11420 Hemlock.

Q. Is that in Los Angeles? A. El Monte.

Q. El Monte? A. Yes. California.

Q. Do you have a telephone?

A. Yes. Gilbert 4-6438. [20]

Q. Thank you. Did you hire the initial crew of shop employees that were on the payroll on June 1, 1965? A. Yes.

Q. You personally hired them? A. Yes.

Q. And I understand that you hired eleven employees that had been on the payroll just before June the 1st. A. Yes.

Q. Do you recall, in making your selections, whether you interviewed all of the people at the shop before deciding what to do or did you decide it some other way, which ones you were going to invite to come back after June 1st?

Mr. Lund: What does "invite to come back" mean? You mean hire?

Mr. Ansell: Yes.

Q. When I say "come back," I mean to work under the Lou Ehlers' administration.

A. No, I didn't interview all the employees. I knew all of the employees.

(Deposition of Erving Graham.)

Q. Were you given any instructions as to the number of people that you should consider for employment on and after June 1st from the group that had been there just previous? A. No.

Q. Did you understand that you could hire back as [21] many as you wanted? A. Yes.

Q. Let me show you what has been identified as Petitioners' Exhibit E, and it purports to be a list of shop employees on and since June 1, 1965, so you might use that as a reference.

Can you tell me, to your knowledge, out of that list how many of the people had not been to Cadillac school or some type of General Motors school for training? A. I would say approximately ten.

Q. You say approximately ten out of that list of employees had not been to GM school?

A. That's right.

Q. Were any of the ten hired as of June 1st?

A. Yes. Of course, I am including maintenance here. You have maintenance people, haven't you?

Q. Oh, I see. A. And car attendants.

Mr. Lund: Washers.

The Witness: The car attendants and washers.

Mr. Ansell: Q. I have got it. The only people that would be going to GM school are mechanics?

A. Yes.

Q. Are there any mechanics on that list that had not been to GM school?

A. As far as I know, every mechanic has went to some [22] GM school, either Chevrolet, Cadillac or Oldsmobile, that is on this list.

(Deposition of Erving Graham.)

Q. Did you ascertain this from discussions with them, from conversation? A. Yes.

Q. How many of the employees, the mechanics, on the payroll as of May 28, 1965, that's Friday, that's the last day apparently that Cadillac operated—how many out of that list of mechanics had not been to GM school?

Mr. Lund: All the mechanics of GM had on May 28th.

Mr. Ansell: Q. In other words, you can forget that list. I am now directing your attention to the mechanics that were on the payroll as of the 28th of May or just prior to the 28th. How many of those had not been to school, GM school?

A. I would say one.

Q. How many? A. One.

Q. When you say that ten on the list that I have given you, namely, Petitioners' E, how many out of Petitioners' Exhibit E, out of the ten that had not been to school, GM school, are mechanics, if any?

Mr. Lund: He has already answered that. He said none of the mechanics on this list hadn't been.

Mr. Ansell: Q. I see. All of the mechanics on this list had been to some type of school? [23]

A. That's right.

Q. Prior to June the 1st had you personally received any complaints from any source about customer dissatisfaction with the maintenance work, service and maintenance work? A. Indirectly, yes.

Q. What was the source of your information?

A. Prior to the 28th my source would be through the service manager.

(Deposition of Erving Graham.)

Q. Mr. Baesemann? A. That's right.

Q. Do you recall anything specifically that Mr. Baesemann said to you in that regard?

A. Not specifically. I would have to phrase it this way. One of the first ones to get a complaint from an owner, and if it happened to be in my department, then I would hear about it. That's where I would hear about the complaints, through him.

Q. Did you ever have an occasion to check out some complaint that was passed on to you by Mr. Baesemann?

A. That's right. Several times.

Q. Did it ever happen that you checked out a complaint and ascertained that the complaint either lacked merit or if it did have merit, it wasn't the mechanic's fault?

A. It runs both ways. At times it could be the [24] mechanic's fault. Sometimes it actually had nothing to do with what the mechanic actually did on it.

Q. Did you find a certain percentage of complaints that lacked merit, period?

A. A big percentage.

Q. A big percentage? A. Yes.

Q. When you were at the Seventh and Bixel agency did you receive directly or indirectly complaints there also about service by the mechanics from time to time?

A. Yes.

Q. Before 1952 when you went to work for Cadillac had you worked in the automotive field?

A. Yes, I had.

Q. Who had you worked for?

A. Warren Cadillac, Minneapolis, Minnesota.

Q. Was that for a substantial period of time?

(Deposition of Erving Graham.)

A. Yes, it was. Approximately eight years.

Q. Did word of complaints directly or indirectly come to you during that eight years also about customer dissatisfaction?

A. Only if they were against me. I was a mechanic at the time.

Q. I see. Would you not receive word at either an employee meeting or by some other source that complaints were being made by somebody? [25]

A. Yes.

Q. In other words, would it be a fair statement to make, that it is not an uncommon occurrence to have customer complaints directed against the service and maintenance department? You get a certain amount of them, don't you?

A. You have got to expect a certain amount, yes.

Q. Some of them have merit and some do not?

A. That's right. Yes.

Q. And out of the ones that have merit some are chargeable to a mechanic and some are not his fault; is that right?

A. That's right.

Q. Let me ask you this: You mentioned as a source of information for customer complaints at the 5151 premises your talks with Mr. Baesemann.

A. Yes.

Q. Did you have any other source of information?

In other words, did anybody else make complaints to you besides Mr. Baesemann about mechanics' work?

A. The service salesmen or service advisors usually made a few.

Q. Out of all of the complaints you received what percentage, what general percentage do you think you

(Deposition of Erving Graham.)

had an opportunity to check out to find out what the nature of the complaint was and whether it did have merit, and if so, whether it was somebody's fault? [26]

A. I'd say about 60 per cent.

Q. You checked out about 60 per cent?

A. I would say that, yes.

Q. In your opinion, was the percentage of meritorious complaints chargeable to some mechanic, so far as you could tell, greater than what you could ascertain over at Seventh and Bixel and in your experience back East or the same or less?

A. I would say—well, honestly, the Wilshire branch was less than Seventh and Bixel.

Q. Was less? A. Was less.

Q. Less than Seventh and Bixel. Let me ask you this: Prior to June the 1st did you ever experience lay-offs for lack of work among any of the employees at 5151 Wilshire? A. Yes.

Q. Was the principle of seniority followed on lay-offs? A. Yes, it was.

Q. Was there a seniority list among the employees at that branch? A. Yes, there was.

Q. Then was it your understanding that Seventh and Bixel had their own seniority list?

A. That's right.

Q. I am not going to ask you to detail all of the [27] reasons, the many reasons why you selected eleven employees and not the others, you know, and why you made a choice of one man as opposed to another man, but can you tell us, in general what in your mind qualified eleven service and maintenance employees for em-

(Deposition of Erving Graham.)

ployment under Ehlers Cadillac whereas others in the unit were not qualified?

A. Well, more versatility in jobs. In other words, a man that could do more than just one particular job and he could do it good. That was one of the main reasons for hiring him, other than his qualifications and background.

Q. Would you say that the eleven people that you hired to work on and after June the 1st had more background, in general, than the other persons who were not invited? A. Yes.

Q. They did? A. Yes.

Q. You mean in terms of experience with Cadillac automobiles?

A. In terms of experience with Cadillacs.

Q. You mentioned the factor of versatility. Is this a factor which you, yourself, came up with in judging and making a decision, or was it something that the new management came out with?

A. It was a combination, because of our limited space there. Mr. Ehlers, on account of the limited space [28] in his shop, they needed more versatile mechanics that could do more than one thing on the car.

Q. Outside of the fact of lack of versatility and the fact that the employees that you didn't invite to work there, in your opinion, lacked the background that the eleven people had that you did hire back, was there any other factor that made you pick these eleven and disqualify the rest?

A. Yes. They are more competent. Let's put it this way: Their workmanship was a lot better.

Q. You felt their work was better?

(Deposition of Erving Graham.)

A. A lot better. The come-back ratio on them was a lot lower than the others.

Q. On June 1st and thereafter at any time up to the point at which you separated from the agency, did you call any meetings of the shop employees yourself where you spoke to them as a group? A. Yes.

Q. Do you recall on how many occasions this happened?

A. I'd say about a dozen times.

Q. Can you tell us now, and I realize this is again a broad, encompassing question and it is difficult to remember, but would you do the best you can to recall what the general subject of those meetings were?

A. The general subject of the meetings were what Mr. Ehlers expected out of each employee, the care and [29] maintenance of his department or stall, workmanship and just, in general, how to conduct himself.

Q. Was there some specific thing that gave rise to these meetings?

Would there be some complaint that had reached you from some source that caused you to bring about a meeting? A. No.

Q. Well, what I am trying to get at, was there some particular reason why you would remind the employees at these meetings what was expected of them by Mr. Ehlers?

A. No specific reason, no. Just a general—

Q. General reminder?

A. General meeting and always had questions he wanted to ask and different things were going to be worked out, we were still going to punch a time clock.

Q. And you did? A. Yes.

(Deposition of Erving Graham.)

Q. Are there any other subjects that you can recall coming up at these employee meetings other than what you have told us?

A. No, but there were others.

Q. Did you ever issue anything in writing by way of policy memorandum to the employees?

A. No.

Q. Did you attend any supervisory meetings just among the supervisors from June the 1st up until the date [30] of your separation?

A. Yes. They were held by Mr. Ehlers himself.

Q. Do you recall how many such meetings you attended?

A. Actually we probably had 15 or 20 of those.

Q. Fifteen to twenty? A. Yes.

Q. Well, again, do you recall at this time what the general topics were that came up at those meetings?

Would they be in the nature of general morale meetings or directed at specific problems that arose?

A. Some were specific problems, others were morale meetings and others were so-called new policy meetings, what he expected out of each man in his job.

Q. When you say new policy meetings, what, if any, new policy, was discussed by Mr. Ehlers?

A. Well, one I can say is that service salesmen or service advisors, whichever you want to call them, was to remain at the shop until all of his so-called written jobs that were slated to go out that day were completed and road tested.

Q. What had been the practice before?

A. The practice had been before that generally the mechanic may have worked on or may have been com-

(Deposition of Erving Graham.)

pleting a job at the time the service salesman was to be off from work and the service salesman would automatically leave for home and the job would be finished, but no road test. [31]

Q. Is there any other new policy that you can recall at this time being discussed by Mr. Ehlers, at least which you would consider as new policy?

A. New policy that a majority of the mechanics were to road test their jobs and also to do their own so-called car jockeying in and out of their own stalls.

Q. Anything else you can think of?

A. Well, the only other one is that all new cars serviced by Lou Ehlers Cadillac were to go back to the original man who serviced the car in the adjustment period.

Q. Prior to June the 1st, if cars were returned during the adjustment period, they would sometimes go back to the mechanic who had worked on them and sometimes not? A. That's right.

Q. But there was no set policy on it, as I understand? A. No.

Q. Any other new policy that you can think of?

A. I don't believe so, but there were others.

Q. There is one thing I would like to be clear on. We were talking before about an hourly rate that is assigned to the people in the service and maintenance, the people that ordinarily work on time allowance, on a time allowance basis. A. Yes.

Q. And I understand they have an hourly rate in [32] addition to this. A. Yes.

Q. That the dealership prescribes. If things are slow and the mechanic, for example, winds up with

(Deposition of Erving Graham.)

maybe, say, 20 hours of actual work per week and the other 20 hours he is hanging around without working, would he actually get 20 hours on that hourly rate, if you know?

A. I don't know. Basically it has never been that slow.

Q. Prior to June 1st what is the name of the representative from Cadillac that you would deal with primarily on matters affecting the shop?

Who would you consider to have been the next highest up in the echelon? A. That's from me.

Q. Yes, higher up from you.

A. Mr. Walter Baeseman.

Q. Mr. Baeseman, of course, was there at all times, wasn't he? A. Yes, he was.

Q. Who was next up from him?

A. Mr. Jim Herndon.

Q. And his position was what?

A. Sales manager, general sales manager.

Q. Who would be next up from him, if you know?

A. That would be Mr. Wilson of the Seventh Street. [33]

Q. What was his position?

A. General sales manager.

Q. Are you acquainted with Mr. Niven?

A. Yes.

Q. Did you ever deal with him on matters?

A. No.

Q. You never dealt with him on anything directly?

A. No.

Q. Was he at the establishment frequently?

A. No.

(Deposition of Erving Graham.)

Q. Do you understand either from conversations that you had with either your own immediate superiors or something that you had seen in writing that Mr. Niven assisted in making policy regarding the shop employees? A. To my knowledge, no.

Q. He had nothing to do with it? A. No.

Q. Did the 5151 Wilshire branch have pretty much its own supervision? A. Yes, it did.

Q. Do you know of any occasions when the supervisors located over at Seventh and Bixel dealt with the employees in the shop department over at your branch?

A. Yes. The only ones they would deal with was Mr. Herndon or Mr. Baesemann.

Q. Oh, I see. [34]

A. That's the only ones they would deal with. Then, from there the messages would be relayed down.

Q. Did you understand that Mr. Herndon, the general sales manager, was involved in problems relating to the shop, the shop employees? A. Yes.

Q. He would be? A. Yes, he would be.

Mr. DeLuce: Off the record a minute.

(A discussion was had off the record.)

Mr. Ansell: On the record.

Q. Let me ask you this question: What capacity did you understand Mr. Herndon to hold?

A. Mr. Herndon was sub-branch manager of the Wilshire sub-branch, 5151 Wilshire.

Q. Who was the branch manager?

A. Mr. Wilson.

Q. At 5151 Wilshire?

A. No, at Seventh and Bixel.

(Deposition of Erving Graham.)

Q. But any dealings with the shop employees would come right from Mr. Herndon, is that correct, down the line? A. Yes.

Mr. Ansell: I have no further questions.

Mr. DeLuce: Any Notary.

Mr. Lund: Any Notary. [35]

Mr. Ansell: Off the record.

(A discussion was had off the record.)

Mr. Ansell: I understand from the off-the-record discussion that it is stipulated between counsel for Cadillac, counsel for Ehlers Cadillac and myself, that with regard to this witness's deposition, we will attempt to give him an opportunity to read the deposition, make any corrections he wants and sign it.

If for some reason he is unavailable, then the deposition can be used for purposes of this case with the same force and effect as if he had signed it.

Mr. Lund: That is agreeable.

Mr. DeLuce: That's agreeable.

Witness

Subscribed and Sworn to Before Me This Day
of, 1965.

Notary Public in and for the County of
Los Angeles, State of California. [36]

State of California, County of Los Angeles—ss.

I, Mark T. Nevill, CSR, a Notary Public in and for the County of Los Angeles, State of California, do hereby certify;

That prior to being examined, the witness named in the foregoing deposition, to wit: ERVING GRAHAM, was by me duly sworn to testify the truth, the whole truth and nothing but the truth;

That said deposition was taken pursuant to annexed Notice at the time and place therein named, and was taken down by me in shorthand and thereafter reduced to typewriting under my direction.

I further certify that I am not interested in the event of the action.

WITNESS my hand and seal this day of, 1965.

Notary Public in and for the County
of Los Angeles, State of California. [37]

Admitted in Evidence 2-23-66.

GENERAL COUNSEL'S EXHIBIT No. GC-3.

Superior Court of the State of California
for the County of Los Angeles.

In the Matter of the Petition of Herbert A. Cooksey, etc., et al., Petitioners, vs. Cadillac Motor Car Division of General Motors Corp., Lou Ehlers, etc., et al., Defendants. No. 863,284.

DEPOSITION of LOU EHLERS,

taken at 1325 Wilshire Boulevard, Los Angeles, California, at 10:00 o'clock a. m., on Friday, September 10, 1965, before Mark T. Nevill, CSR, Notary Public. [1]

Appearances of Counsel:

For the Petitioners: Richman, Garrett & Ansell, by: Herbert M. Ansell, 1325 Wilshire Boulevard, Los Angeles, California.

For the Respondent Lou Ehlers Cadillac: Latham & Watkins, by: Richard W. Lund, 615 South Flower Street, Los Angeles, California.

For the Respondent Cadillac Motor Car Division of General Motors Corporation:

Lawler, Felix & Hall, by: Richard D. DeLuce, 605 West Olympic Boulevard, Los Angeles, California. [2]

LOU EHLERS,

having been first duly sworn, deposed and testified as follows:

Examination

By Mr. Ansell:

Q. Mr. Ehlers, have you ever had your deposition taken before? A. No, I haven't.

(Deposition of Lou Ehlers.)

Q. Has Mr. Lund explained to you the nature of this proceeding today? A. Yes.

Q. You understand that the questions I ask you and the answers that you give are part of the testimony in the case entitled Petition of Herbert A. Cooksey, etc. versus Cadillac, Lou Ehlers, etc., Superior Court No. 863,284. Do you understand that? A. Yes.

Q. And that whatever you say and whatever I ask will be reduced to a booklet like I am showing you here. You will be given a chance to read it over, make corrections, if you want, and sign it.

If you make corrections, we might be able to call attention to that at the time of trial, if you are called upon to give testimony, you understand. If there is anything I ask you that is vague and unclear in any way, [3] ask me to repeat it. A. All right.

Mr. Ansell: Is there anything you want to add?

Mr. Lund: No.

Mr. Ansell: Q. Mr. Ehlers, as I understand it, the articles of incorporation of Lou Ehlers Cadillac were filed on May 19, 1965; is that correct?

If you want to add in, Dick, go ahead on questions like this.

Mr. Lund: Yes, because I don't imagine he will recall the date. I can give you a record of it.

Mr. Ansell: His declaration says that Ehlers is a California corporation, having been incorporated on May 19. I assume the articles were filed that day.

Mr. Lund: That is correct.

Mr. Ansell: Q. What office, if any, do you hold with that corporation?

A. President and treasurer.

(Deposition of Lou Ehlers.)

Q. Who is the vice president?

A. L. J. Bennett.

Q. Does Mr. Bennett reside here in Los Angeles?

A. Yes.

Q. Do you know his address?

A. I know it's on La Cumbre in what I would call the Pacific Palisades, but I can't give you the specific address.

Q. To your knowledge, was Mr. Bennett in the [4] automobive business in some regard prior to his assuming this office?

A. Yes.

Q. What is his background in that regard?

A. He has been with me since 1947.

Q. You mean he just came out here from Milwaukee recently?

A. Yes.

Q. In what capacity did he work for you in Milwaukee?

A. General sales manager.

Q. That was in a dealership in Milwaukee, I assume?

A. Yes.

Q. What was that dealership called?

A. Lou Ehlers, Inc.

Q. Does he actively work at Lou Ehlers Cadillac?

A. Yes.

Q. In what capacity?

A. As general sales manager.

Q. Would he be in charge of just new car sales or does that include used and new?

A. It includes new and used.

Q. He has been with you since you opened up here; is that right?

A. Yes.

Q. Is there a secretary-treasurer?

A. I am the treasurer. The secretary is Eleanor K. [5] Ehlers.

(Deposition of Lou Ehlers.)

Q. That is your wife, I assume? A. Yes.

Q. Who are the members of the board of directors?

A. It would be Mr. Edward F. Jennik, Eleanor Ehlers, Mr. Bennett and myself.

Mr. Lund: Pardon me. Is your mother?

The Witness: I am really a little bit vague on this at the moment, under the new corporation.

Mr. Lund: I think your mother is.

The Witness: That's the way it was previously, and my mother was on the board of the Lou Ehlers, Inc., Milwaukee, and whether she is of the California, I can't really tell you.

Mr. Ansell: Q. Mr. Jennik, does he work in the business in some regard?

A. Yes. He is hired as our business manager.

Q. What is his primary function as business manager?

A. He is in complete charge of everything but sales.

Mr. Lund: A point of clarification. He may be misleading you, Herb, or misleading me.

Mr. Ansell: Do you want this on the record?

Mr. Lund: Yes. The witness is in charge of all sales. Does that include service and sales?

The Witness: No. He asked about Mr. Jennik.
[6]

Mr. Lund: In charge of everything but sales?

The Witness: In charge of everything but sales.

Mr. Lund: Excluding service sales, too?

The Witness: Well, that's a little difficult to describe. He is not in charge of service sales. He is more in charge of the operations, the policy operations of service.

(Deposition of Lou Ehlers.)

Mr. Ansell: Q. Is he the highest ranking employee you have?

A. No, I would say that he and Bennett would be on a par.

Q. Would it be fair to say that Bennett's sphere of authority is pretty much centered on the sales aspect whereas this man is concerned mostly with employee policy matters and purchase of automobiles, parts and accessories and anything pertaining to the rest of the business besides sales?

A. Procedures and practices, yes, that would be a pretty accurate summation of their respective duties.

Q. Would he have anything to do with supervision of the sales personnel?

A. No. When you say "he," you have reference to Jennik now?

Q. Yes. A. Yes. He would not have.

Q. Anything concerning the sales employees would be [7] Bennett?

A. Would be Bennett.

Mr. Ansell: Off the record.

(A discussion was had off the record.)

Mr. Ansell: Q. What is the first contact you had with any representative of General Motors Corporation regarding the securing of a franchise to sell Cadillacs out here?

A. It was verbal. It was a telephone call.

Q. Who made the call?

A. Mr. F. T. Hopkins, assistant general sales manager of the Cadillac Motor Car Division, Detroit.

Q. Assistant sales manager?

A. Assistant general sales manager.

(Deposition of Lou Ehlers.)

Q. Did he call you in Milwaukee? A. Yes.

Q. Do you recall when that was, approximately?

A. It would be either the latter part of March or approximately the 1st of April.

Q. Of this year? A. Yes.

Q. Can you recall the substance of that conversation?

A. He indicated that something I had been pursuing for approximately ten years, namely, a Cadillac franchise, a right one appeared to now be available, and if I had an [8] interest, why, he would be happy to discuss it further with me. And he described the operation here at 5151 Wilshire.

Q. Do you recall what he did say about the operation at Wilshire?

A. Nothing really too much except to say that it had been a factory branch over a rather substantial period of time and in keeping with apparently their nationwide policies of closing down many of their factory branches, this would become a privately owned operation and he was prepared, if my interest was still high, to offer this to me.

Q. What did you say, in substance?

A. I said I would, indeed, be interested, but I would like to look at it at the physical facilities before I jumped.

Q. Did you subsequently come out here and take a look?

A. I flew out the next day to look at it.

Q. Did you talk to any representative of General Motors either at that location or elsewhere here in California when you came out the next day?

(Deposition of Lou Ehlers.)

A. I did not.

Q. You did visually observe the premises, though; is that right? A. Yes. [9]

Q. You went inside and walked around?

A. Yes, I did.

Q. Now, let me just go back and pick up one question I neglected to ask you before.

In your declaration you say that you are the principal and majority shareholder of the Lou Ehlers Corporation. Who are the other shareholders?

A. Mrs. Ehlers and Mr. Bennett.

Q. What is the next thing that happened that led up to you securing a franchise from GM?

A. I reported back to Mr. Hopkins after seeing the facility and generally become more familiar with the Los Angeles area, that I was exceedingly interested.

Q. What did he say, if anything?

A. He congratulated me on my decision.

Q. How was the conversation left? Was there to be another meeting or were you to be notified in writing in some way?

A. As I recall, he simply said, "Proceed back to Milwaukee and you will hear from me."

Q. Did he advise you either in the first or the second conversation that you told us about that there was in existence a labor agreement with the painters and machinists union?

A. I don't honestly remember, but if I had to guess, I would say he did. [10]

Q. Did he tell you when the expiration date of that contract was?

A. No. I think he merely made reference to the fact that there was a union shop, as I recall.

(Deposition of Lou Ehlers.)

Q. Did you ask him anything on that subject, either in the first or second? A. No, I did not.

Q. What is the next thing that happened in your dealings with GM?

A. I returned to Milwaukee and I would say possibly a week later I again received a phone call from Mr. Hopkins telling me that they had set a target date of June 1 as a take-over, and I inquired as to when he would like to have me here, and he pretty much left this to my discretion.

He realized that I had very substantial dealership operations in Milwaukee and in Madison, Wisconsin, that it would take some very fast movements on my part to dispose of these holdings per his request before I would be an acceptable candidate to Cadillac here. So as soon as I received this call from him I proceeded to find a buyer for both Milwaukee and Madison.

Q. I assume this was a telephone conversation?

A. Yes.

Q. What is the next thing that happened?

A. Perhaps I should back this up and add one thing in the interest of clarity. When I received the first [11] phone call I was not told the exact pinpoint location. I was asked to come to Detroit, which I did the following day. I physically went to Detroit.

Q. Following the first conversation?

A. Following the first conversation. Then proceeded to Milwaukee the next day and the following day to Los Angeles. There was a physical contact made.

Q. What is the next contact you had with GM representatives following the conversation that you had with Mr. Hopkins upon your return to Milwaukee?

(Deposition of Lou Ehlers.)

A. I really don't rememer other than to say I am sure there were perhaps one or two other phone calls, perhaps at least one of them initiated by myself, reporting what progress I was making in the disposition of my Milwaukee and Madison holdings.

Q. Were these phone calls made to Mr. Hopkins?

A. Yes.

Q. Subsequently was there a meeting held between yourself and GM representatives in Los Angeles regarding the purchase of the facilities? A. Yes.

Q. That occurred about May 11th? Excuse me. May 12th?

A. I would say approximately that date. I have no real reason to remember the precise dates, but I would say that's fairly accurate, yes. [12]

Q. Prior to this date did you receive any written correspondence from GM? A. No.

Q. Did you send any letters to GM yourself?

A. No.

Q. So that it would be fair to say that prior to May 12th all of your dealings with GM were on an oral basis? A. That is correct.

Q. And you communicated with nobody from GM except Mr. Hopkins with the possible exception of your trip to Detroit? A. Prior to what date?

Q. May 12th.

A. No, I would have talked with Mr. Niven, who is Cadillac zone manager in Los Angeles prior to that date.

Q. When did you speak to him, if you recall?

Let me withdraw that question and I will ask you this: Did you speak to Mr. Niven following your trip to Los Angeles to inspect the premises on Wilshire?

(Deposition of Lou Ehlers.)

A. Yes, I did.

Q. Was that by phone or in person?

A. By phone.

Q. Could you tell us what the substance of that conversation was?

A. Mr. Niven was also present in Detroit at the [13] meeting that I had with Mr. Hopkins, so I simply confirmed to him that I was very interested in becoming the Cadillac dealer on Wilshire Boulevard.

Q. Did you have any particular reason to communicate with Mr. Niven at this time?

A. Oh, I would say protocol.

Q. Do you recall any more details about the operation at Wilshire being discussed between yourself and Mr. Niven?

A. No, there were no specific discussions pertaining to the dealer operations at all.

Q. Were you supplied with any figures concerning sales of Cadillacs, new and used in prior years at this time?

A. There were vague references to figures at the Detroit meeting, personal meeting, and they didn't pinpoint the exact number of cars, but intimated it was approximately a thousand new cars a year.

They didn't seem to know what the used car operation did.

Q. Incidentally, at this Detroit meeting you told us about, was anybody else present besides Mr. Hopkins and Mr. Niven representing GM?

A. Yes, Mr. Mays, general sales manager of Cadillac.

(Deposition of Lou Ehlers.)

Q. Does he maintain his office in Detroit, if you know? A. Yes. [14]

Q. Anybody else? A. No, those three people.

Q. Then you were the only one representing your interests; is that correct? A. Yes.

Q. Was anything said at the Detroit meeting about Cadillac's previous labor policy or labor relations with either of the two unions involved?

A. There was—yes, I am reasonably certain that they mentioned that there was a union agreement.

Q. Did they say anything above and beyond that?

A. No, they did not.

Q. Nothing was said that you recall about the type of relations that GM had with the unions in the past?

A. Well now, let me qualify this. I believe at this personal meeting they indicated that the contract was between GM and the union and would have no bearing on my status as a dealer.

They indicated that their position would be one of when the time was right that they would notify all their employees that they were being terminated, not just the union employees, but all employees.

Q. This was at the Detroit meeting?

A. Yes.

Q. Was anything else said besides this about the union? [15]

A. No, not to my memory.

Q. Aside from your telephone conversation with Mr. Niven following your trip to Los Angeles, were there any other discussions with any GM representative prior to May 12th?

(Deposition of Lou Ehlers.)

A. Do you mean official discussions pertaining to the take-over or do you mean just casual conversations?

Q. Well, any conversations at all generally related to the take-over regardless of how official or casual they may be.

A. I would say from memory, yes, some Cadillac representative would drop by and make reference to the fact that I was going to be the dealer and I suppose I would have to classify it as more or less casual conversation.

Q. Let me ask you this: Had you ever sold new or used Cadillacs previously? A. No.

Q. Do you recall any of the circumstances of a meeting occurring in Los Angeles on or about May 12th?

A. Yes. This was—let me just off the record for a moment refresh my memory.

Mr. Ansell: Off the record.

(A discussion was had off the record.)

The Witness: Yes. I met with—I believe there were two attorneys representing General Motors. I think the controller of Cadillac Motor Car Division, Detroit, [16] Archie Long by name, was present, as was Mr. Hopkins and Mr. Niven.

Mr. Ansell: Q. Do you know who the two attorneys were? A. I do not recall their names.

Q. Was anyone else present representing your interests at this meeting?

A. Yes, Mr. Alan Halket of the law firm of Latham & Watkins.

Q. And yourself? A. And myself.

(Deposition of Lou Ehlers.)

Q. This meeting was in Los Angeles?

A. Yes.

Q. Will you tell us what transpired?

Let me strike that.

You state in your declaration that you entered into a buy and sell agreement.

A. Let me please elaborate a little bit.

Q. Sure.

A. Perhaps it might anticipate your question.

As I look back now, there were really two meetings on this subject. The first one was in Mr. Niven's office, as I recall, somewhat prior to May 12th, where I was first presented the buy-sell agreement in the form as proposed by Cadillac.

Mr. Halket—I am trying to remember whether he [17] was present. I think he was at this first meeting. These were presented to us in blank for the purpose of reviewing, which was subsequently accomplished by Mr. Halket and myself and apparently, as is usual in matters of this kind, certain phrases and words were changed and clarified and then this resulted in the previously referred to meeting, I think, of May 12th when we consummated this agreement.

Q. You executed it on that day? A. Yes.

Q. Do you have a copy of the buy and sell agreement here?

Mr. Lund: Yes. I will give you a photostatic copy of the executed original of the agreement of May 12, 1965 between General Motors Corporation, Cadillac Motor Car Division, and Louis W. Ehlers.

Mr. Ansell: Give me just a second.

(Deposition of Lou Ehlers.)

May we have this document identified as Petitioners' Exhibit A and attached to the deposition.

(The document referred to was marked by the Notary Public as Petitioners' Exhibit A for identification, and is attached hereto.)

Mr. Ansell: I notice on page 2 of the buy and sell agreement, Exhibit A, there is a commitment on the last paragraph, the buyer to make available to seller for a reasonable period, et cetera, et cetera, some amount of office space for use by representatives of GM for purposes [18] of completing the closing of GM's operation. That in substance is what it seems to provide.

Q. Do you know whether these GM representatives actually utilized some space on your location following your take-over date?

A. I am not on the record now. I am trying—

Mr. Lund: Yes, you are.

The Witness: I am asking to go off the record for a minute here.

Mr. Ansell: What is your pleasure here? If he wants to ask a question to refresh his memory, I have no objection.

Mr. Lund: Off the record.

(A discussion was had off the record.)

Mr. Ansell: Back on the record.

Q. Do you have a recollection that there were some GM representatives occupying some space on your premises following June 1st, but you simply don't know who it was?

Mr. DeLuce: May I make one comment? Wasn't there a period of time from June 1 to June 7 in which there was an inventory being taken?

(Deposition of Lou Ehlers.)

The Witness: Yes, there was, but you must keep in mind that during these very hectic moments I couldn't be in all places at one time, and I don't remember whether these were employees that remained on our—not remained, but that were hired, or whether they were GM employees who didn't intend to remain at the retail level. I can't honestly [19] remember this.

Mr. Ansell: Q. Then you just don't have a recollection at this time— A. No.

Q. —whether GM representatives actually occupied space; is that correct? A. Yes, that's correct.

Q. In your declaration on page 2, paragraph 3, commencing with line 18, you refer to an agreement to purchase certain assets owned and used by GM in the sale of Cadillac motor vehicles, parts and accessories and the service of such motor vehicles.

And then you go on to describe these assets, specifically machinery and shop equipment, et cetera.

Do you have any document with you in which there is itemized the assets that were being transferred over from GM to yourself, to Lou Ehlers Corporation?

A. Yes.

Q. May I see that.

Mr. Lund: Well, I am going to hand you a bill of sale. I think this is dated the 7th of June, but I have however, removed from the photostatic copy I am giving you a number of the schedules which do itemize.

I don't believe that the detail of the list of fixed assets, for instance, are material; in fact, that there were fixed assets purchased and some generalization as to [20] what they encompassed. The numbers might be pertinent, but the detail is not, but I have no ob-

(Deposition of Lou Ehlers.)

jection to your going into it in a general way. If you want, I have the schedule here and you can take a look at it.

Mr. Ansell: Oh, I see, you have the supporting schedule.

Mr. Lund: I am holding out the schedule from the copy I am giving you. I think the list of fixed assets here looks like it's about ten pages, listing a cleaner, a tester, a rack, a regulator, a bench, a fan exhaust, and so on, every little detail.

Mr. Ansell: In other words—

Mr. Lund: A desk, and so on. If you want to take a look, I have no objection.

Mr. Ansell: The schedule you are referring to details what is generally described in Schedule A through K of the bill of sale which you have handed to me; is that right?

Mr. Lund: It is detail Schedule A.

Mr. Ansell: Just A.

Mr. Lund: Now, on Schedule B, I haven't given you that. That's cars. I can give you the number of them, if you want it.

There were apparently three company cars and about ten used cars.

Mr. Ansell: All right. Without going into the detail, have I generally described correctly what you have in the schedules, the statement I made before? Do you [21] recall what that is or do you want me to repeat it?

Mr. Lund: I think you had better repeat it.

Mr. Ansell: I said the schedules that you are looking at right now in front of you, do they general de-

(Deposition of Lou Ehlers.)

tail what is described in Schedules A through K of the bill of sale which you have handed to me?

Mr. Lund: Yes.

Mr. Ansell: May we have the bill of sale marked as Exhibit B and attached to and made a part of the deposition.

(The document referred to was marked by the Notary Public as Petitioners' Exhibit B for identification, and is attached hereto.)

Mr. Lund: On Petitioners' Exhibit B, the bill of sale, I have cut out, physically cut out the figures, the dollar amounts that are listed in that document.

Mr. Ansell: Q. All right. Does Exhibit B and, in particular, Schedule A to K make reference to all of the physical assets that were transferred from GM to the Lou Ehlers Cadillac Corporation?

A. I would say yes.

Q. May I ask you this: Do you have any documents with you that would disclose the inventory of the new automobiles that were on hand, the new and used automobiles that were on hand as of the take-over date, June 1, 1965?

A. I don't know whether we have a list of the new cars. [22] Yes, we do.

Q. Could you give me a total figure on that or an approximate total figure?

Mr. Lund: It looks like 94.

The Witness: 94.

Mr. Ansell: 94. Would that be new and used?

Mr. Lund: No, new.

Mr. Ansell: Q. All new? A. New.

(Deposition of Lou Ehlers.)

Q. Do you have an approximate number of used cars that were on hand?

Mr. Lund: I gave you that orally, I mean I gave it to you a moment ago. I said about 12 used cars. I can give you the exact figure. 11. Is that correct?

The Witness: Yes.

Mr. Ansell: You said 11?

Mr. Lund: Yes.

Mr. Ansell: Q. Incidentally, where are the used cars sold in relation to where the new cars are sold? Is there a lot across the street?

A. There is an adjacent outdoor lot, yes, adjacent to the showroom.

Q. Is that lot the same lot that was utilized by GM for purposes of used car sales?

A. It's a little hard to give you a yes-or-no answer. It is in part. The Wilshire branch of Cadillac [23] had many of its cars taken by its downtown branch and sold either by the downtown branch lot or a third lot, as I recall, being told was located on Vermont Street.

In other words, the downtown branch operated two used car lots and had control over the disposition of the trades that Wilshire had taken on new car sales.

Q. When you say downtown, you refer to the Seventh and Bixel? A. Seventh and Bixel.

Q. And then a third lot?

A. There would be a total of three lots including 5151 Wilshire.

Q. Do you know where the other lot was located?

A. I presume either across the street or contiguous to Seventh and Bixel, and the second lot again solely controlled by Seventh and Bixel was somewhere on

(Deposition of Lou Ehlers.)

Vermont. If you were to ask me, I would say Sixth and Vermont, but I wouldn't want to be held to that. I have never seen it.

Q. But whatever used cars were sold physically adjacent to the 5151 Wilshire premises by GM are now being sold at the same physical location; is that correct?

That is, whatever used cars you do sell are sold in the same place where the vehicles that were stored at that location were?

Mr. Lund: Herb, would it be, are they displayed in the same lot, same area? [24]

Mr. Ansell: That is correct.

The Witness: They are displayed in the same area, yes, but the selling conditions are very different under us than they were under GM.

Mr. Ansell: Q. Can you tell us in what way they are different?

A. Well, as I just tried to recite, Wilshire was solely controlled by Seventh and Bixel. The Wilshire had no true jurisdiction over any of its actions. Seventh and Bixel, for example, could say, "We want the trade you just made on the sale of the new car to Mr. Smith. We want this down at our Seventh and Bixel lot or we want it for our Vermont lot," and then Seventh and Bixel or Vermont might give Wilshire one of their cars.

Q. In place?

A. In place of it or may not replace it at all. All wholesaling was done—wholesaling of used cars at 5151 Wilshire was done by Seventh and Bixel, so I am told.

Q. So this is what you refer to when you say there is a difference in the selling procedure?

(Deposition of Lou Ehlers.)

A. Yes.

Q. And while we are on the subject, are the new automobiles physically displayed at the same place they were prior to the take-over? A. Yes, they are.

Q. As I understand the terms of Exhibit A, the [25] Lou Ehlers Cadillac Corporation entered into a lease arrangement with General Motors relating to the premises at 5151 and the adjacent lot; is that correct?

A. Yes.

Mr. Lund: Wait a minute. Is it with GM? Yes.

Mr. Ansell: Q. Do you have a copy of that lease with you here?

Mr. Lund: No, other than the attachment you have, I presume.

Mr. Ansell: Let me take a look at it.

Mr. Lund: I know they never executed a formal lease, so I presume it would be the same attachment.

Mr. Ansell: Q. Let me show you what has been marked as Exhibit A, a sublease attached to what we have designated as Exhibit A, and I will ask you if that document is, in fact, a true copy of the lease that was entered into with General Motors Corporation relating to the 5151 Wilshire Boulevard premises?

A. To my best knowledge, yes.

Q. Other than these documents that you have shown me, namely, Exhibit A and B, are there any other written documents relating to the purchase of any assets by the Lou Ehlers Corporation from General Motors?

I assume there us a franchise agreement here.

Mr. Lund: There is an assignment. I have handed you a document headed "Assignment," which I think

(Deposition of Lou Ehlers.)

also has an [26] execution date of June 7th. Again, I have cut out the dollar amounts.

Mr. Ansell: This appears to be an assignment from General Motors. Off the record.

(A discussion was had off the record.)

Mr. Ansell: First of all, would you mark as Petitioners' Exhibit C this document labeled as "Assignment" handed to me by counsel. It is a document of, well, approximately eight or nine pages, and attach that and make it a part of the deposition.

(The document referred to was marked by the Notary Public as Petitioner's Exhibit C for identification, and is attached hereto.)

Mr. Ansell: Q. Is Petitioners' Exhibit C just a finalization of the buy and sell agreement that was entered into on May 12th, the buy and sell and the bill of sale?

A. I wish I could tell you. I can only say I signed more documents.

Mr. Lund: If you read it over, yes, buy and sell provides for the assignment of these at the proper time of these items and this is the consummation of that.

Mr. Ansell: Q. I assume that the May 12th agreement was contingent upon you securing the franchise; is that right? A. Yes.

Q. And then when you did, you entered into [27] Petitioners' Exhibit C, the finalized agreement?

A. Yes.

Q. Incidentally, is there among these documents a copy of the franchise agreement?

Mr. Lund: Regretfully, we didn't bring it. Mr. Ehlers' office is in such a mess because they are ren-

(Deposition of Lou Ehlers.)

ovating, he can't get into it. I will send you a photostat. Do you want to make a number for it?

Mr. Ansell: D.

Mr. Lund: D. And I will send you a photostat of it.

Mr. Ansell: All right. Fine. Better yet, would you send that to the reporter and then just attach that and make that a part of the deposition, Exhibit D.

Q. Now, outside of Exhibits A through D, were there any other documents executed by you in connection with your business arrangement with General Motors?

A. I signed an awful lot of documents but—

Mr. Lund: I don't recall of any.

The Witness: I don't believe anything that was pertinent to the consummation of this arrangement.

Mr. Ansell: All right. Can you leave it this way: As I understand, Dick, your best recollection is that there are none. If it develops there are other documents, you will advise me at your earliest convenience. Okay?

Mr. Lund: All right.

Mr. Ansell: If I don't hear from you, I will assume [28] there were none.

Mr. Lund: There were some detailed schedules and the inventories that would have been initialed, physical count, that sort of thing.

Mr. Ansell: The same sort of thing you referred to in connection with the Petitioners' A?

Mr. Lund: Yes. I know that there is some of that, but other than that I don't believe there is anything else.

(Deposition of Lou Ehlers.)

Mr. Ansell: Q. Did you have any conversations with Mr. Joe Pais prior to June 1, 1965?

A. Yes. I made his acquaintance.

Q. Do you recall when that was?

A. Do I recall when?

Q. Yes.

A. It was, I believe, the occasion of his—at the time, I think, that he announced the termination of all the GM employees as a result of Cadillac Motor Car Division discontinuing their retail operation at 5151 Wilshire. I think that was the occasion.

Q. You mean when he spoke to the employees?

A. This is my understanding, but I, of course, did not hear him speak to the employees or physically know that he had done it. I just think this is why he was there.

Mr. Lund: In other words, you are saying you think it was on the day he came out and talked to the employees that you saw him. Is that what you said? [29]

The Witness: I think so.

Mr. Lund: All right.

The Witness: Yes.

Mr. Ansell: Q. Was that at the premises or some place else?

A. It was in my office, what was to be my office.

Q. Do you recall the conversation you had with him on that day?

A. I think it was just generalities, wishing me well on the take-over of the premises on the effective date, and specifically I can't recall exactly what we talked about. It was nothing pertinent, I don't think, to this issue here.

(Deposition of Lou Ehlers.)

Q. Do you recall whether there were any discussions about the question of the existing labor agreement?

A. I think he told me that he had notified the unions. I think he said there were two unions and they had been properly notified that GM was discontinuing operations and that he notified the employees.

That, I think, is the only things that was pertinent to this issue that we discussed.

Q. You don't recall him saying anything specifically about the union contract? A. No, I do not.

Q. Was this the only meeting that you had with Mr. Pais prior to June 1st? [30]

A. As a meeting, I would say yes. It seems to me that he was in Los Angeles on two different occasions, and I think I had a casual hello, how are you, good-by type of conversation with him at a subsequent date, but my memory isn't real clear, though.

Q. Do you recall whether that was prior to or following your take-over?

The Witness: Do you remember?

Mr. Lund: You have got to do your own.

Mr. Ansell: Q. If you can recall.

A. Oh. I don't remember.

Q. This other meeting that you just referred to, do you remember whether anything was said at that meeting about the existing labor agreement?

A. No, there was no discussion.

Q. Do you have with you a list of the employees on the payroll at 5151 Wilshire as of May 28, 1965 or the day prior to May 28?

A. No, I do not have anything prior to May 28.

(Deposition of Lou Ehlers.)

Q. Do you have such information at your office?

A. No. We were not left with any official records.

Q. You were not given a list of the employees on the payroll just before you took over the operations?

A. I seem to recall having seen such a list, but it was not officially given to me. I think it was in the possession of some of the ex-GM people, but for some [31] reason best known to themselves and it seems to me I saw such a list.

Q. At any rate, you don't have such a list at the present time? A. No.

Q. Any place?

A. Not to my memory, I do not.

Q. Do you have any payroll information concerning the employees that were employed at that establishment just before the take-over, any payroll cards or any information?

A. Not to my knowledge.

Q. Do you have with you a list of all employees with their beginning date of hire on the payroll at 5151 Wilshire Boulevard, on and subsequent to June 1, 1965?

A. Yes.

Mr. Lund: Well, not quite. I hand you a document headed "Lou Ehlers Cadillac Shop Employees, June, 1965."

I think there were a few of those who were hired subsequent to June, and June 1st, and I could identify those for you, if you want.

Mr. Ansell: Is that names that do not appear on this list?

Mr. Lund: No, they are on the list, but I mean they were hired subsequent to June 1.

(Deposition of Lou Ehlers.)

Q. Do you recall whether there were any discussions about the question of the existing labor agreement?

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Q. Do you recall whether that was prior to or following your take-over?

The Witness: Do you remember?

Mr. Lund: You have got to do your own.

Mr. Ansell: Q. If you can recall.

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(Deposition of Lou Ehlers.)

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A. Yes.

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I think there were a few of those who were hired subsequent to June, and June 1st, and I could identify those for you, if you want.

Mr. Ansell: Is that names that do not appear on this list?

Mr. Lund: No, they are on the list, but I mean they were hired subsequent to June 1.

(Deposition of Lou Ehlers.)

Mr. Ansell: Well, the question was those on the payroll on and subsequent to June 1, 1965. [32]

Mr. Lund: All right.

Mr. Ansell: This document you handed me would be inclusive.

Mr. Lund: I don't know about July and August. There may have been one or two hires or some slight change in the more recent period, but this is, in essence, what the work force was in June and I am sure very slight changes thereafter.

Mr. Ansell: Q. Can I ask you when, approximately, this list was prepared?

A. May I see that list, please?

Q. Sure.

A. I would say it was prepared a day or so after our take-over date.

Mr. Lund: No, it wasn't. About a month ago.

Mr. Ansell: Q. About a month ago?

A. Month ago? Oh.

Q. All right.

A. I would have to look at each one of the names to be sure.

Q. Well, I am satisfied with the answer.

A. Oh.

Q. Counsel has given me an approximate date. I am satisfied with it.

Mr. Lund: That's about the same date, I guess, June, July. [32-A]

Mr. Ansell: Q. As indicated on this document, those persons who have an asterisk before their names were employed at 5151 Wilshire Boulevard prior to the take-over; is that correct? A. Yes.

(Deposition of Lou Ehlers.)

Mr. Ansell: Would you mark this as the next in order, which would be E, and attach it and make it a part of the deposition.

(The document referred to was marked by the Notary Public as Petitioners' Exhibit E for identification, and is attached hereto.)

Mr. Ansell: Off the record.

(A discussion was had off the record.)

Mr. Ansell: Q. The employees listed on Petitioners' Exhibit E, I assume, are just the shop employees; is that right? A. Yes.

Q. Do you have with you a list of all personnel employed in a supervisory capacity at your premises, both sales and shop, on and since the take-over date?

Mr. Lund: I don't have the list.

The Witness: I have a record of it.

Mr. Ansell: Q. Do you have such records that you can tell me who they are?

Mr. Lund: Probably do that.

The Witness: I think I can do that without it. [33]

Mr. Ansell: Okay.

Mr. Lund: Incidentally, if it will help the witness, if you don't mind—

Mr. Ansell: No.

Mr. Lund: —I think I have a list that I prepared for my use. It might make it a little easier for him to work from.

Mr. Ansell: No objection.

The Witness: Do you wish me to read this list?

Mr. Ansell: Yes. I would like to have the names of all the supervisors on and since June 1, 1965.

Mr. Lund: Are you talking about the shop?

(Deposition of Lou Ehlers.)

Mr. Ansell: Shop and sales.

Mr. Lund: Shop and sales supervisors.

The Witness: When you say "on and since" now, let's assume that we have replaced a man in a capacity. Do you want the first man and then do you want the second man?

Mr. Ansell: Correct.

The Witness: All right. This is strictly supervisory now.

Mr. Ansell: Yes.

Mr. Lund: Shop and sales.

Mr. Ansell: Q. By supervisory, let me further define that. It would mean foremen, leadman. By way of example, using your terminology, sales manager, used car sales manager, service manager. [34]

A. Do you want to ask me by position and I will name it? Is that better?

Q. All right. Fine. We can do that. Will you give me the name of the first general manager that you had on your payroll since the take-over.

A. That is myself.

Q. General manager? A. Yes.

Q. Okay. Is there an assistant general manager?

A. There is not.

Q. Who would be next in command down the echelon from yourself?

A. Well, it would be between Mr. Bennett and Mr. Jennik, depending upon the nature of the matter at hand.

Q. Could I impose on you to give me their titles again, please? I have forgotten.

A. Yes. Mr. Bennett is general sales manager.

(Deposition of Lou Ehlers.)

Q. Hold it. Bennett. Okay. He was on the payroll as of June 1st and he still is, I assume? A. Yes.

Q. How about the sales manager? Excuse me. I am sorry. That was general sales manager.

A. We can continue with that, if you wish. I can give you a fill-in on that.

Q. Well, excuse me. Before we do that, what is the other gentleman? Jennik? [35]

A. Edward F. Jennik, J-e-n-n-i-k.

Q. And his position is what?

A. He would be business manager.

Q. And he has had this position since the take-over?

A. No, he has not. He has been with us approximately three weeks.

Q. Did he have a predecessor?

A. No, he did not.

Q. Can you give me the other supervisors? Well, all right. Are there any other supervisors on the new car sales?

A. Yes, James Herndon, new car sales manager.

Q. Anyone else in the new car sales?

A. Not in new. The used car sales manager would be Jerry James.

Q. Are there any other supervisors in used car besides Mr. James? A. There are not.

Q. How long has Mr. Herndon been with you, with that establishment? A. With us?

Q. Yes. A. Since the take-over date.

Q. How about Mr. James? A. Same.

Q. Do I assume correctly there are no other [36] supervisors in the sales department, new or used, other than what you have told me? A. There are not.

(Deposition of Lou Ehlers.)

Q. I may have asked you this before, but do you recall where Mr. Jennik worked prior to the take-over?

A. Yes. He had his own firm in Milwaukee. He was a CPA.

Q. How about Mr. Herndon?

A. Mr. Herndon was former branch manager for Cadillac Motor Car Division at 5151 Wilshire.

Q. How about Mr. James?

A. Mr. James was a used car salesman at 5151 Wilshire.

Q. When GM operated? A. Yes.

Q. Moving now to the shop, or we should call it generally, I suppose, the service and maintenance department. A. All right.

Q. Who has occupied the position of service manager since the take-over?

A. Erving Graham, succeeded by Vern Kennell.

Q. When was Mr. Graham succeeded by Mr. Kennell, approximately? A. Can I ask him?

Q. Sure.

Mr. Graham: August 6. [37]

The Witness: August 6th?

Mr. Ansell: Q. What position does Mr. Graham hold now with the company?

A. Mr. Graham announced to me—

Mr. Lund: Wait a minute. You are not answering the question.

The Witness: What position he holds? No position with us.

Mr. Ansell: Q. He is not on the payroll?

A. He has resigned.

Q. He has resigned. Was that effective as of August 6th?

(Deposition of Lou Ehlers.)

Mr. Graham: Yes.

Mr. Ansell: Q. Was Mr. Graham employed by General Motors at the 5151 Wilshire Boulevard branch?

A. Yes.

Q. Prior to the take-over? A. Yes.

Q. In what capacity?

A. Second floor shop foreman.

Q. And Mr. Kennell, where was his previous employment? A. He was parts manager.

Q. Parts manager? A. Yes.

Q. Was he parts manager prior to the take-over?

[38] A. Yes.

Q. At 5151 Wilshire? A. Yes.

Q. In your declaration you say that you hired two other persons as shop foremen. Do you know who those are?

A. We hired Leigh Bolstad and Jerry Hansen.

Q. Was that effective on or about the 1st of June?

A. I think shortly thereafter.

Q. Are they still on the payroll in that capacity?

A. They are not.

Q. Are they with the company any longer?

A. They are not.

Q. Do you know where Mr. Bolstad worked prior to his employment with your company?

A. I am not real certain, but I think he worked at Seventh and Bixel.

Q. What capacity did he work there?

A. I believe a foreman, but again I am not certain of this.

Q. How about Mr. Hansen?

A. I don't know where Mr. Hansen came from.

(Deposition of Lou Ehlers.)

Q. To your knowledge, was he at either 5151 Wilshire or Seventh and Bixel?

A. I know he was not at 5151, but I do not know whether he was at Seventh and Bixel.

Q. Have these gentlemen been replaced? [39]

A. One of them has.

Q. Which one is that? A. Leigh Bolstad.

Q. What is the name of the person replacing him?

A. Dwain Symard, S-i or S-y-m-a-r-d.

Q. He is a shop foreman now?

A. Yes, second floor shop foreman.

Q. Where did he work prior to taking over this position? A. Parts department.

Q. At 5151? A. 5151.

Q. Was he in the parts department prior to June 1, 1965? A. To my knowledge, yes.

Q. Do you know in what capacity he worked?

A. As a parts clerk, I think.

Q. Are there any leadmen in the service and maintenance department?

A. Would you define a leadman for me?

Q. Well, I will have to go to the labor reports. Well, let me ask you this: Are there any personnel in addition to the people you have named who you expect to direct other service and maintenance employees in their work or to assign work in some work?

A. Yes. [40]

Q. Who are they and what capacities do they hold in your mind?

A. Lou Kleinou, K-l-e-i-n-o-u, I believe, or o-w. I am not sure of this. He is new car make-ready foreman.

(Deposition of Lou Ehlers.)

Q. How long has he held that position?

A. Approximately a month and a half.

Q. Did he have a predecessor?

A. Yes, James Bringman.

Q. Where did Mr. Kleinou work prior to taking over in his capacity as new car get-ready foreman?

A. Murphy Oldsmobile.

Q. How about Mr. Bringman?

A. Mr. Bringman formerly worked for Cadillac Motor Car Division at 5151.

Q. In what capacity?

A. I think they referred to him as a new car clerk.

Q. Are there any other persons that direct work other than what you have named?

A. You have reference to right up to the present moment?

Q. Yes.

A. We have employed Mike Whitehead as assistant service manager.

Q. That was effective when, approximately?

A. Two weeks ago. [41]

Q. Did he have a predecessor? A. No.

Q. Where did Mr. Whitehead come from prior to taking over this position?

A. My understanding is that he was customer relations manager for Cadillac Motor Car Division, Seventh and Bixel.

Q. Are there any other personnel on the payroll, either at present or since June 1, 1965, who have had the authority to recommend wage increases, hire or fire?

Mr. Lund: You are still talking about the shop?

(Deposition of Lou Ehlers.)

Mr. Ansell: Yes.

The Witness: I don't recall any.

Mr. Ansell: Q. Are you saying that you have told me the names of all of the supervisory personnel now at 5151?

A. Let me refresh my memory.

Q. Sure. A. Dave Lovejoy.

Q. What is his position?

A. Night service manager.

Q. How long has he had that position, approximately?

A. Approximately three weeks.

Q. Did he have a predecessor?

A. In this capacity? No.

Q. What was Mr. Lovejoy's position prior to that?

A. In our employ he was formerly new car make-ready foreman. [42]

Q. Do you know where he worked prior to June 1st?

A. He was a service advisor for Cadillac Motor Car Division at 5151 Wilshire.

Q. Is there anyone else in a supervisory capacity at any time since June the 1st?

A. Roy Rogers, R-o-g-e-r-s.

Q. What is his position?

A. He is—well, he has a dual capacity. He is our estimator of body and paint work and also has a foreman's capacity insofar as the body and paint department is concerned.

Q. How long has he had this position?

A. I would say since approximately the 15th of June.

(Deposition of Lou Ehlers.)

Q. Where did he work prior to that?

A. He was in a similar capacity at Seventh and Bixel.

Q. When was he actually hired? I don't mean when he actually commenced his duty, but when was he hired for this position by your company? Was it before or since June 1st?

A. Oh, after June 1st.

Q. Just a matter of a few days?

A. It had been a good week or more, I'd say.

Q. About a week. Did he have a predecessor?

A. Yes.

Q. Who was that? A. Ken Hendrix.

Q. Is he at present with your organization? [43]

A. He is not.

Q. Did he leave the organization as of around the 15th of June? A. Yes.

Q. Did Mr. Hendrix work at 5151 Wilshire in some capacity prior to June 1st? A. Yes.

Q. What capacity was that? A. Same.

Q. Are there any other—

A. Let me qualify that.

Q. Sure.

A. I don't believe prior to June 1st that he had any foreman authority. He was more or less confined to estimating, so I understand.

Q. Are there any other supervisory personnel on your payroll besides what you have told me about in any of the departments of service or maintenance? By that I use it broadly to mean new car get-ready, paint, body

(Deposition of Lou Ehlers.)

work, mechanic, anything involved with getting a car in shape in some regard.

A. I would say not.

Q. Are there any service and maintenance personnel who are used exclusively in used cars?

A. There are none.

Q. The same people that service the new cars service [44] the used cars; is that right?

A. Yes.

Mr. Lund: If I may ask a question.

Mr. Ansell: Yes.

Mr. Lund: Who does this new car make-ready guy supervise?

The Witness: New cars? I thought you asked me about used cars.

Mr. Ansell: Q. Initially I was talking about new car get-ready.

A. Your last question, I thought—

Mr. Lund: Read that other question.

(Record read)

Mr. Lund: You have answered it. Isn't it accurate?

The Witness: May I stay off the record for a minute?

Mr. Ansell: Off the record.

(A discussion was had off the record.)

Q. Would you repeat that, please.

A. Sure. We employ new car make-ready men whose prime responsibility is to service new cars preparatory to delivery to a customer. These men would perform other services only if there was an absence of new car work.

(Deposition of Lou Ehlers.)

The same new car men rehandle the new car during the so-called dealer warranty period where the customer might bring it back for some untoward happenstance. That [45] could be any number of things. The car is again assigned back to the same man who prepared it for delivery.

Q. All right. In any event, you have given me the names of all of the supervisory personnel—

A. Yes.

Q. —in all of these categories of persons in the shop department? A. To my memory, yes.

Mr. Ansell: I wonder if we can leave it that in the event that it develops there are additional supervisory personnel, that you will notify me as reasonably soon as you can. I say that only because he is testifying from some memory here.

Mr. Lund: You are talking about in the shop or the sales?

Mr. Ansell: In the shop or sales.

Mr. Lund: He named a lot more than I knew of. I don't believe he has got any more, but we will run it down.

Of course, I didn't make a list.

Mr. Ansell: I appreciate that.

Mr. Lund: So I don't know how—

Mr. Ansell: Well, I assume that if there are any additional ones, he will notify counsel.

Mr. Lund: I will tell you, we will correct the deposition. How is that?

Mr. Ansell: That's fine. [46]

The Witness: We are confining your question just to service, not parts or anything else or office or anything?

(Deposition of Lou Ehlers.)

Mr. Ansell: No, I am not talking about that.

Mr. Lund: I will make a note to correct the deposition, I mean we will make a specific check if we have overlooked anything on the supervisory, and we will correct the deposition.

Mr. Ansell: Fine.

Q. In the parts department—you may have given me this, but if you have, I have forgotten—who is the parts manager? Who is the top ranking person in charge of the parts department? A. Right now?

Q. Well, since June 1st.

A. Well, it was first Vern Kennell and now Phil Del Monte, just the way it sounds.

Q. How long has he had the position of parts manager? A. Since August 6th.

Q. Where did Mr. Del Monte work prior to August 6th?

A. He was parts clerk at 5151 Wilshire.

Q. Did he work at that location prior to June 1st?

A. Yes.

Q. In what capacity? A. Parts clerk. [47]

Q. Are there any other supervisory personnel in the parts department? A. No.

Q. Let me ask you this: Referring again to Petitioners' Exhibit E, the names you have given me here, does that include parts employees? A. No.

Q. It does not. Can you tell me who the parts employees are? A. Today?

Q. Well, since June the 1st.

A. I think they are mentioned right in here.

Q. I am interested in everybody that has been on the payroll on and since June the 1st.

(Deposition of Lou Ehlers.)

A. All right. You will have to bear with me a minute here.

Q. Sure. A. Now, this is since June 1st.

Mr. Lund: Starting June 1st.

The Witness: May I? Erv has a good memory.

Mr. Ansell: Go right ahead.

The Witness: Robert Del Lare. I have already named Phil Del Monte.

Mr. Ansell: Q. Yes.

A. Donald W. Masters. Dwain Symard.

Q. How do you spell that? [48]

A. S-y-m-a-r-d. Joseph Tabone. I guess that's it.

Mr. Lund: May I go off the record?

Mr. Ansell: Sure.

(A discussion was had off the record.)

Mr. Ansell: Q. Have you told me now all of the employees in the parts department?

A. Have I named about six people there?

Q. Four plus Mr. Del Monte.

Mr. Lund: That's right.

Mr. Ansell: Q. Is that the entire group?

A. Well now, let me think.

Mr. Lund: That is correct.

The Witness: But he has asked me since.

Mr. Lund: Oh.

The Witness: So I think I have. You have asked me from June 1st to the present?

Mr. Ansell: Q. That is correct.

A. We have added two persons, and at the moment their names escape me. I can't tell you who they are.

Q. They are working in the parts department?

(Deposition of Lou Ehlers.)

A. Yes. One, of course, would be a replacement for Phil who—I mean for Vern who was taken out, succeeded by Phil. Some of it is succession rather than addition.

Mr. Ansell: Well, could you add their names in the deposition? Do you want to handle it that way?

Mr. Lund: All right. [49]

(Information requested) Bonaline Hall, Edward Parades, Wm. Nethercutt, Garrett Fagan, Mike Rothstein, Daney M. Steffey.

Mr. Ansell: Q. Could you tell me where Mr. Del Lare worked prior to June 1st?

A. This indicates he was a former Cadillac employee at 5151 Wilshire.

Q. How about Mr. Masters? A. Same.

Q. How about Mr. Symard? A. Same.

Q. And Mr. Tabone? A. Same.

Q. Did these people work in the parts department prior to June 1st? A. Yes.

Q. I will ask you this: On the list that you have furnished me on Exhibit E, does that include what you call new car or used car get-ready personnel?

A. May I look at it again?

Q. Sure. A. I think so.

Q. Sure. A. Yes.

Q. Do you have a clerical staff? A. Yes.

Q. How many people, approximately, do you have in the [50] clerical department?

A. Twelve, approximately.

Q. Can you tell me their names, please?

Mr. Lund: Oh, I object. I don't think the names are relevant or material.

(Deposition of Lou Ehlers.)

The Witness: Well, I can give—

Mr. Lund: I want to bring this to an end.

Mr. Ansell: I think, Dick, it would be relevant on the general question of successorship.

Mr. Lund: Names are relevant?

Mr. Ansell: Well, the only reason I am interested in the names is to ascertain whether they have been hired since or worked there prior. I don't particularly care. That's the only reason. Other than that I have no real interest in these people specifically.

Mr. Lund: All right. That phase, whether they worked at that agency before, I have no objection to your pursuing.

Mr. Ansell: Are you permitting him to give the names then?

Mr. Lund: If that's the shortest way of doing it.

Mr. Ansell: Q. Can you give us the names?

A. You want the names—let me understand your question. You are looking for the names of our current staff of clerical workers?

Q. Well, on June 1st and since. [51]

A. Oh, boy.

Mr. DeLuce: Wasn't your question really: Are there any people working there in a clerical capacity who worked there prior to June 1? Isn't that your—I mean if they have been hired since, what difference does it make?

Mr. Ansell: We can go about it that way, I am willing to rephrase the question.

Q. Will you give me the names of any clerical personnel, and I use clerical in a very broad sense, meaning bookkeeping, any type of clerical work?

(Deposition of Lou Ehlers.)

A. Management?

Mr. Lund: No. He is talking about nonsupervisory.

Mr. Ansell: Q. Well, supervisory personnel or non-supervisory who performed clerical duties other than what you have already told me about here, who were employed in some capacity at either Seventh and Bixel or 5151 Wilshire prior to June 1st.

A. You want their names or you want the numerical, how many?

Q. The names and positions.

A. Arthur Makinson, office manager.

Q. Could you spell that for the record?

A. M-a-k-i-n-s-o-n.

Q. What is his position again?

A. Office manager.

Q. Did he work at 5151? [52] A. Yes.

Q. All right.

A. I will have to look up some of these names. One is married and changed her name. Tirabassi, Lillian M.

Q. What is her position?

A. We call her a DMV girl, a Department of Motor Vehicle girl.

Q. Did she work in that same capacity, if you know, prior to June 1st?

A. To my knowledge, she did.

Q. At least she worked at the premises, though?

A. Yes.

Q. Anybody else?

Mr. Lund: You say "to my knowledge." I never know what a witness always means. Do you mean "Yes, I know that to be a fact," or "To the best of my knowledge. I am not sure"?

(Deposition of Lou Ehlers.)

Mr. Ansell: I took it as the latter, Dick.

The Witness: To the best of my knowledge, this is what she did, but I have no way of proving this.

Mr. Ansell: Q. Go ahead.

A. I can do this almost better by memory. Patricia Foran, F-o-r-a-n.

Q. M or n? A. N.

Q. What position does she work at?

A. It's hard to define. [53]

Q. Is she in the clerical staff department?

A. Clerical, yes.

Q. She was employed there prior to June 1st?

A. Yes.

Q. Anybody else?

A. Noreen Rosati, PBX operator.

Q. She was there in the same capacity to your knowledge? A. Yes.

Q. Prior to June 1st? A. Yes.

Q. Anyone else?

A. Les Kaplan, accounts receivable clerk.

Q. Did he work in the same capacity prior to June 1st, to your knowledge? A. Yes.

Mr. Lund: You asked to his knowledge and he means to the best of his knowledge.

Mr. Ansell: Yes. Every time he says that, I understand he means to the best of his knowledge.

The Witness: Phil Isaacson.

Mr. Ansell: Q. What is his position?

A. Cashier.

Q. Same capacity prior to June 1st?

A. To the best of my knowledge.

Q. Okay. [54]

(Deposition of Lou Ehlers.)

Mr. DeLuce; "As far as I know."

The Witness: Again, I am hazy in how I should answer. May I go off the record?

Mr. Ansell: Sure.

(A discussion was had off the record.)

The Witness: Joseph Jones, cashier.

Mr. Ansell: Q. Did Mr. Jones work in the clerical department prior to June 1?

A. To the best of my knowledge.

Q. Okay. A. Marsha Lowande.

Q. What capacity?

A. Office clerk. Her prior position was at Seventh and Bixel.

Q. Did she commence her duties shortly after the 1st of June or on June 1st?

A. I would say a couple weeks after.

Mr. Lund: I would say as of June 1st.

The Witness: Was she? Oh, yes, as of June 1. I am sorry. I guess we talked to her prior to that. Betty Mansfield.

Mr. Ansell: Q. What capacity was that?

A. Office clerk.

Q. Did she work in the same capacity prior to the take-over?

A. As far as I know. [55]

Q. At 5151 Wilshire?

A. Yes. I think it is.

Q. All right. Can you tell me this: At the present time how many clerical personnel do you have who did not work at the 5151 premises prior to June 1st?

A. One—I—

(Deposition of Lou Ehlers.)

Mr. Lund: Give an approximation and then correct it on the deposition.

How about that, Herb?

Mr. Ansell: Sure.

Mr. Lund: Give your rough guess and check the records.

The Witness: Seven.

Mr. Ansell: Q. Five or six who were not there prior?

A. Yes, that were not there prior to June 1.

Q. And your estimate is that the total number of clerical employees you have at the present time is about 12?

A. Twelve or thirteen.

Q. Twelve or thirteen? A. Yes.

Q. Do you have somebody on the payroll that you classify as bookkeeper? A. Yes.

Q. Let me ask you this: Was that person the bookkeeper prior to June the 1st? A. No. [56]

Q. Is there an accountant the firm uses?

A. No.

Mr. Lund: What was the question? Is there a what?

Mr. Ansell: Is there an accountant.

The Witness: Accountant firm, I thought you asked me.

Mr. Ansell: Q. Well, I didn't say "firm," but I mean as a CPA or CPA firm?

A. An outside firm, you have reference to?

Q. Inside or outside. Is there a CPA in addition to the bookkeeper? Is there a CPA that your business uses?

(Deposition of Lou Ehlers.)

A. He is on our payroll, Mr. Jennik.

Q. Jennik?

A. Jennik. We referred to him previously. Remember, I said he was a CPA?

Q. That's right. A. Or is a CPA.

Q. Have we covered all of the different categories of employees working in your establishment? We have talked of clerical, we have talked of used and new car service, shop employees, shop personnel.

Is there any other category we have omitted now?

A. I don't think so.

Q. How many used and new car salesmen are on the payroll at the present time?

A. I believe we have 13 new and four used.

Q. Has that figure changed any from what it was on [57] June 1st?

A. I think we had 12 on June 1st, new, and four used on that date.

Q. As of that date how many of these persons were working in a sales capacity at 5151 prior to June 1st?

A. As of that date, as of June 1?

Q. That's right. We are talking about the 12 new and the four used.

A. As far as I know, they were all in that capacity.

Q. They had all been salesmen prior to the take-over? A. Yes.

Q. In your declaration you stated that the basis of compensation has changed since the take-over. I can't find it here.

I can refer you to your specific statement. Just a moment.

(Deposition of Lou Ehlers.)

Page 4, line 20, starting with "The method of pay." Are you familiar with the statement?

Mr. Lund: Do you want to read it to him?

Mr. Ansell: Q. Okay. "The method of pay is different from that used by GM and the incentive rates allow the employee to make greater earnings."

Your shop personnel are paid on a percentage basis, are they not, in accordance with the work they do?

Mr. Lund: Incentive? [58]

The Witness: They are paid according to flat-rate time scales established by Cadillac Motor Car Division, the dollar amount per flat-rate hour, is determined by us.

Mr. Ansell: Q. In other words, GM establishes the number of hours that are needed to do a particular type of job like a transmission job? A. Yes.

Q. Or brake relining? A. Yes.

Q. Then you pay us a rate that you fix?

A. That we fix.

Q. On that number of hours regardless of the number of hours that it actually takes the employee to do the job; is that right?

A. That's right.

Q. Do you know whether prior to the take-over the 5151 agency set the amount themselves, or did that amount come from some place else?

A. The amount per hour, you have reference to?

Q. Yes.

A. The amount per hour, as I understand it, was prescribed by the union contract.

Q. Oh. The time allowance, that is, the number of hours on which you pay per job is set by the General Motors [59] manual; is that right?

(Deposition of Lou Ehlers.)

A. Now, you are speaking of us?

Q. Yes. A. Yes.

Mr. Lund: Well, is it set or do you follow it? Do they have any mandate from General Motors that that is what you pay?

The Witness: Well, as a practice, I think all dealers follow the same prescribed number of hours per given operation.

There can be minor variances in this, in our dealership or any dealership.

Mr. Lund: Yes. But, again, if I may clarify at this point, is this by mandate from Cadillac?

Mr. Ansell: Well, that's something I would rather take up with him.

Mr. Lund: I am sorry.

Mr. Ansell: Q. Well, as I understand it, GM in its book gives advisory or suggested time allowance as a practical matter and the dealerships, as far as you know, follows this?

A. Yes.

Q. This is worked out fairly scientifically and you go along with it; is that right? A. Yes.

Q. Now, you made the statement here on page 4 of [60] your declaration immediately following that sentence, and I quote, "Many of the other terms and conditions of employment in the shop are different from those of GM."

Can you tell us what you have reference to there? What other terms and conditions have changed?

A. Well, I found it difficult to understand what the other—

(Deposition of Lou Ehlers.)

Mr. Lund: I am going to interrupt the witness. You are not answering the question. He asked you whether any changes were made in your terms and conditions of employment that you now have that you understand are different from those of GM.

The Witness: I feel that our policies and practices are much more clearly defined, that each employee precisely understands what his duties and obligations are, whereas it was difficult, as far as I could look back upon this, for anyone to completely understand what these policies and procedures were under GM.

Mr. Ansell: Q. Well, specifically—

Mr. Lund: Herb, you are talking about wages, hours, benefits, that sort of thing?

Mr. Ansell: I am taking what you just said.

Q. As I understand it, you said that each employee under your management understands his obligations clearer. In what way is this accomplished?

A. It's accomplished by the tremendous amount of [61] time that I personally spend in our service and parts operation. It's accomplished by insistence that each one of our department heads or foremen meet regularly with each of his subordinates to clarify policies and procedures as the occasion calls for, whereas to my knowledge such meetings did not take place prior.

Q. By "such meetings," you mean meetings between the foremen and the employees in the shop department?

A. I have reference to, for example, the service manager meeting with the service advisors with his foremen and they, in turn, with—"they," meaning the foremen, in turn, with their mechanics or painters or body men.

(Deposition of Lou Ehlers.)

Q. What is the basis of your statement that this wasn't done prior to your take-over?

A. I would say conversations with prior management.

Q. Do you have any idea as to how many meetings or what the practice was in holding meetings between

— A. Prior?

Q. Yes, prior to the take-over.—between the different foremen and the shop employees?

A. I don't believe there was any pattern to it.

Q. And you say you gathered this information from having conversed with people on your payroll that were there previous?

A. That were there previous, yes.

Q. Can you think specifically of anybody, the name [62] of anybody that told you this?

A. Mr. Baesemann.

Q. Mr. Baesemann is a representative of General Motors, is he not?

A. He was a Cadillac service manager.

Q. He is not with your company now, is he?

A. He is not.

Q. Was he with your company at any time following June 1st? A. No, he was not.

Q. So this conversation you held prior to June the 1st? A. Prior.

Q. Do you recall just what Mr. Baesemann said about meetings between foremen and shop employees?

A. Not specifically. I think it was just generally conceded by him that the shop was just run in a very loose manner.

(Deposition of Lou Ehlers.)

Q. Is there anybody else that you can think of specifically that you had a discussion with that gave you the belief that meetings between supervisory personnel and shop employees were rare?

A. Yes, Mr. Graham.

Q. Anybody else?

A. No. Well, yes. Let me retract that. Mr. Hern-don, former branch manager of Cadillac, told me that he was very [63] unhappy with the looseness, the general looseness of the way the shop affairs were conducted.

Q. Did he say anything specifically about the frequency of meetings between shop supervisory employees and shop employees?

A. To my knowledge, I think he told me that there actually were none.

Q. Is there anything else specifically that you refer to when you talk about other terms and conditions of employment?

You have mentioned now, as I gather, that there are meetings held with greater frequency between the supervisors and the service department and their underlings. Is there anything else?

A. Yes. We have insisted that our mechanics take an entirely different approach to the orderliness and the cleanliness of our entire shop instead of operating in the atmosphere that existed in the past.

Mr. Ansell: Can you read back that answer, please?

(Record read)

Mr. Ansell: Q. Well, specifically did you gather from your observations prior to June the 1st that the shop wasn't kept as clean as you would like it to be?

(Deposition of Lou Ehlers.)

A. Yes.

Mr. Lund: An understatement.

The Witness: A very, very dirty condition. [64]

Mr. Ansell: Q. And you have stressed to the mechanics that they should keep the place clean?

A. Within the confines of their own work areas.

Q. Incidentally, when you say their own work areas, you mean that each of the mechanics has a stall, and so forth? A. Yes.

Q. So-called that they work in?

A. Within his own stall we ask him to keep his equipment that he uses therein as well as the surfaces that he works on clean and free of grease and oil.

Q. Can you think of any other specific in connection with your statement that working conditions have changed?

A. Well, we have eliminated pick-up and delivery service which existed under the GM operation.

Q. By pick-up and delivery, what do you mean?

A. Well, a customer would phone into the service department on prior days and ask that his car be picked up at his place of business or at his home, serviced and then delivered back to one of the two addresses.

Q. Who would go out and do the pick-up and delivery?

A. I presume they called them car attendants, but I can't be sure of what terminology they used.

Q. Was it your understanding that there were people employed just for that purpose? [65] A. Yes.

Q. That's all they did?

A. That's all they did.

(Deposition of Lou Ehlers.)

Q. Do you know how many such persons were on the payroll? If you want to refer—

A. I think there were a total of eight which included people who moved cars about in the building, car jockeys, as they are commonly called.

Q. Do you have some car jockeys on your payroll?

A. We have two.

Q. These are the people that move the vehicles around in the building?

A. Inside the building, into our own parking premises only.

Q. You are saying you have eliminated the service of pick-up and delivery? A. Yes.

Q. Are there any other changes in working conditions that you have reference to?

A. We discharged a maintenance service that—

Q. Oh, yes.

A. —GM employed and directly hired our own personnel to do this.

Q. How many people do you have doing maintenance work? A. Two and a half. [66]

Q. Two and a part-time man? A. Yes.

Q. Were those people formerly employed at the premises in any capacity at all prior to June 1st?

A. Not to my knowledge.

Q. They do nothing but janitorial work?

A. That is correct.

Q. Do you have any other specific in mind with relation to a change of working conditions?

Mr. Lund: Are you including now when using working conditions, the wages and—

Mr. Ansell: No. I am glad you said that.

(Deposition of Lou Ehlers.)

Q. Exclude the basis of compensation. I am just talking about working conditions. Exclude wages and hours.

A. All right. Yes. We run a real tight shift insofar as new car make-ready is concerned.

As I understood it, GM had specific men service a new car prior to delivery and if the car wasn't properly serviced and it was to come back with a series of customer complaints, the car would be assigned to any particular mechanic who was available at the time, thereby presenting no true incentive to do a first-class job.

So based on my experience in the automobile business, I felt that correcting this made it necessary first to pay the man substantially to make the new car [67] ready and let him know that the car was going to be returned to him for any come-back work, as we call it in the business.

Q. If there were any complaints then on a new car, that goes back to the man that got it ready in the first place?

A. That is correct.

Q. How do you keep track of what man did the new car get-ready work initially?

A. We have two methods: one would be reference to the internal repair order directing the shop to prepare a new car for delivery; and secondly, we affix a label under the hood of the car indicating who conditioned the car mechanically, who undersealed the car, who undercoated it, who the foreman was that inspected it.

Q. Who does this?

(Deposition of Lou Ehlers.)

A. Who affixes the label?

Q. Right.

A. The mechanic preparing the car, who first prepares the car.

Q. Are there any other specifics that come to mind when you say change of grouping conditions?

A. Again, I am hazy in this area, but I have heard constant reference made to a list that I think ex-GM people refer to as a special list or a supplementary list that had its origin apparently as a result of the union contract where an employee would complain that the [68] specifically allotted time wasn't ample, and I was told that this thing had various and sundry abuses.

So we eliminated this supplemental list and told our men that in the event they ever felt there was a grossly unfair operation that they were called upon to do where they could not earn fair wages doing it, we wanted the prerogative or examining the situation and revising the amount they would earn if conditions warranted doing it.

Q. Well, how did the supplemental list work? I am not clear on that. If you know.

A. I really don't know. I have merely heard reference to this list through Mr. Graham and Mr. Baese-mann.

Q. Who is the list submitted to?

A. I believe, and I wouldn't want to be held to this, but I believe it was a result of gripes on the part of the mechanics who are operating under the union contract to their supervisors, and it related not only to mechanical, but to appearance of items on the automobile, such as polish and blue coral, et cetera.

(Deposition of Lou Ehlers.)

Q. The list, you mean each individual employee would write something on the list like a gripe list?

A. No, no. He would start out with a verbal gripe, apparently, and then the verbal gripe would resolve itself into creating a higher scale of pay for the performance of a certain operation. For example, I recall being told [69] that no matter how minute a blemish might appear in the preparation of a new car, in the blue coral operation, the operator would immediately complain that it took him an extra three minutes or two minutes to correct this, so he wanted to be paid extra to do it rather than to accept the fact that no new car is perfect, and these blemishes exist in each and every new car that any dealer gets, and rather than to accept the fact that the rate he was being paid to perform this service incorporated the time that he was expected to spend on these minor blemishes, it constantly involved a hassle over these little additional times that he had to spend.

So GM in the interest of avoiding any arguments with the unions and any work stoppages, would acquiesce and say, "Let's pay him an extra ten minutes or an extra half hour, whatever the amount of time the man feels he should get for this."

Q. This is what you have heard? A. Yes.

Q. Who gave you this information?

A. Baesemann and Graham.

Q. All right. But procedurally how would it work? As I understand it, the employee would make an oral grievance, an oral complaint to somebody in authority at the location; is that correct?

A. Yes, I would assume this. [70]

(Deposition of Lou Ehlers.)

Q. Would it be his foreman?

A. I would assume that.

Q. What would the foreman supposedly do with this complaint?

A. I presume the foreman would take it to the service manager and the service manager would take it to the branch manager—

Q. All right.

A. —and the branch manager would take it to the —excuse me—to the general manager of the branches, and the story, as I got it, is—more accurately, the general manager of the branches says, “Well, let’s not get into an argument or work stoppage. Go ahead and give it to them,” sort of an acquiescence.

Q. Where does the supplemental list come in?

A. Pardon?

Q. You referred to a supplemental list.

A. This is what I am referring to. The blue coral operation would be an example of one item that would appear on this supplemental list. How many items were on this list, I don’t know, because I never saw the list.

Q. Well, I am just unclear about two things now. I understand how the grievance works its way up to Mr. Ferzackerly. Does Mr. Ferzackerly incorporate some type of list or is this just a figure of speech? Is there really a list? [71]

A. Oh, yes. There was a supplemental list, as I understood it, in the possession of the Union and Cadillac Motor Car Division.

Q. This would be a list of grievances?

Mr. Lund: List of time.

(Deposition of Lou Ehlers.)

The Witness: Well, it would be a list of time changes to perform certain operations.

Mr. Ansell: Q. I see.

A. Not a list of grievances.

Q. You are saying this list would be changing the basis of pay— A. Yes.

Q. —in accordance with complaints that come up from time to time? A. Yes.

Q. You have never seen one of these lists yourself? A. No.

Q. Just something you heard about?

A. Yes. I was told it had many, many abuses. This is my memory of what I was told.

Q. Do you know where these lists were maintained?

A. Do I know where?

Q. Yes. Where were they maintained while GM operated the branch?

A. I think they were maintained by the shop foreman, the service manager. [72]

Q. The list would actually reflect like constant amendments to the labor agreement; is that what you are saying? A. Yes.

Q. So what you are saying, the big change, as you see it, is when employees have a complaint of this nature, they feel they are not adequately being compensated for a certain type of work, they are to take it up with their manager and it is discussed, I assume, by the management of your location?

A. Yes. But the important thing I am trying to say here is that at least the people I talked to in General Motors all felt this was a highly abused situation.

Q. Too many complaints?

(Deposition of Lou Ehlers.)

A. No. The resolving of them into higher pay to perform a job actually was an acquiescence in the interest of avoiding argument more than it was a situation where the employee was entitled to it, and having found out that GM acquiesced easily, the list had a way of growing very rapidly.

Q. So that eventually under your operation you will review these grievances that come up and determine if they have merit? A. Yes.

Q. And probably you would characterize your surveillance of these complaints as perhaps a little bit stiffer? [73] A. Yes, that's correct.

Q. Okay. Incidentally, have you made changes in your compensation from time to time?

A. We have made none that I am aware of at the moment.

Q. Had there been complaints that you had been called upon to pass upon?

A. Not to my knowledge. Our service manager might have had one, but he has not acquainted me with it.

Q. It has never come to your attention?

A. No.

Q. Are there any other specifics that you refer to now when you say that many of the other terms and conditions of employment in the ship are different? Have you told me about everything?

A. Yes. We insist in our hiring program that a man either be capable of performing more than one operation—in other words, we are trying to avoid specialists as such or be willing to be trained in areas other than which he is already familiar so that he might per-

(Deposition of Lou Ehlers.)

form diversified services on a given automobile, whereas GM, so I am give to believe, permitted total specialization, which means that if a customer drives in and asks for five different services to be performed on his car, the car has to be maneuvered into five different work stalls, creating the hazards obviously in moving it, of damage and delays and [74] additional parking space, whereas our philosophy is a man should be able to perform well several services to any given car, thereby reducing the movement of the car around in the shop and expediting the time in which we can release it back to the customer.

Q. Don't you have some employees that are brake specialists, so-called?

A. Yes. I don't mean to say this applies in all cases.

Q. What I am getting at, as a practical matter, don't your shop employees specialize, work at a specialty in the shop, for example, transmission work and brake relining?

A. Yes, there are certain areas where it is necessary because of the equipment that is incorporated into the stall, such as a tune-up would remain pretty much specialized because of the expensive and elaborate equipment that is necessary to stay in that stall. You couldn't afford to buy tune equipment and locate it in every stall in the place. It would just be uneconomical to even consider it.

Similarly, in the case of brake work, you must have a brake lathe, which is another expensive piece of equipment, and consistent with brake work would be a front end machine which again is perhaps a \$3,500 item,

(Deposition of Lou Ehlers.)

which takes special mounting. So these items are very specialized in nature and they are just inescapable. I have reference to, for example, a case of where we would [75] like for a man who has air conditioning ability, who has ability to remove squeaks and rattles from automobiles, who would not be adverse to performing lubrication services to a car, who would change light bulbs if they should be out, who would have electrical ability and would trace a short in a car, and we expect this man to perform all of these things or be willing to be trained in these areas as opposed to, as I understand it, under GM, that each man pretty much had only one specific speciality that he performed, and when he performed it and there was no additional work, he just stood idly by until there was the next job in that line.

Q. So you are saying, to summarize what you said, in some cases that is still the fact, for example, with transmission work and with brake relining, but to the extent possible you have your people performing more than just one speciality in a car?

A. That's correct.

Q. Do you refer to anything else specifically now when you say that other terms and conditions have changed?

A. Again, we are making no reference to wages or methods of compensation.

Q. No. That's right.

Mr. Lund: Or hours.

Mr. Ansell: That is correct.

The Witness: Or hours? [76]

Mr. Ansell: Q. Yes.

(Deposition of Lou Ehlers.)

A. Well, I don't know whether this is still an answer to your question, but let me try it. We have asked each employee when we hired him and all new hires to have a very, very sensitive attitude toward customer satisfaction, and while this is a broad subject, we specifically have told them that we do not want them to undertake to repair a man's car at, for example, 4:00 o'clock in the afternoon and at 4:30, which would be his normal quitting time, to walk out on this job if another 15 minutes, possible up to an hour, would complete the job and get the car back to the customer, and we have had all employees agree to do this, whereas under GM I am told that when 4:30 arrived, that was it.

Regardless of what stage of repair a car might be in, the employee would cease working on it and the customer was simply told, "We are in the middle of repairing your car and you can't have it until the next day," or whenever it might be ready.

Q. Is there any line drawn specifically as to time? For example, you say if it could be done in approximately 15 minutes overtime, stay and do it, or if it could be done in a half an hour, stay and do it, whereas you say if it is above and beyond a certain amount of time in excess of the normal closing, forget it, do it the next day?

A. I would think, while I don't believe we have [77] specifically said to any man, "You must stay here"—I think the unwritten word on it is an approximate hour as a maximum, would we expect a man—depending on the nature of the job.

(Deposition of Lou Ehlers.)

If he is working on a five-hour job and he is, give or take, finished three-quarters of the way with it, we would want him to stay and finish it, more for the customer's benefit than ours.

Q. Are there any other specifics that come to mind in connection with your statement that the conditions have changed?

A. In the interest of time, may I come to that as I think of them? I can't offhand. It's been four months now since we started this.

Q. I realize that. The only thing is for the purpose of the deposition I would like to kind of get this subject—I would like to get your best recollection and leave the subject and go on to something else, you see.

Mr. Lund: I don't know. I might ask him: Has there been any difference in road checking cars? I don't know.

The Witness: I don't know what GM did, but I know what we are doing.

Mr. Lund: Then we can't say it's a difference.

The Witness: I mean I don't know any more than to the best of my knowledge is what I mean to say.

Mr. Ansell: Q. Well, you have some information as to [78] what GM did in connection with road checking?

A. Well, it's kind of idle conversations that I have had with many people who were formerly affiliated with GM, that there was a looseness in this area in the past as there was in so many other areas in the shop.

Q. In which way was there a looseness?

A. In determining whether or not the workmanship was exactly what it should have been and whether the customer was getting what he paid for.

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Q. In which way was there a looseness?

A. In determining whether or not the workmanship was exactly what it should have been and whether the customer was getting what he paid for.

(Deposition of Lou Ehlers.)

Q. Who would road check the vehicles under GM management, to your knowledge?

A. To my knowledge, I presume the shop foreman did this to the best of his ability, but one man cannot possibly road test all of the jobs that require road testing. He is just physically impossible to do it. He wouldn't have time to do it.

Q. So your information is that not all of the cars were road checked?

A. That's correct.

Q. Who does it now?

A. We ask that the mechanic first road test his own work, if the nature of it calls for it. There are certain items you obviously don't have to road test. We ask that the mechanic do it and that the shop foreman do it, if he can possibly afford the time, the service advisor above [79] everyone else remains primarily responsible for seeing that the work—is done correctly as he is the man that writes the work in the first instance as a customer comes in to our service reception area. He is greeted by the service advisor. The service advisor writes the repair order and is in whatever additional communication with the customer that he might have to be as a result of our examination of the problem that exists on a man's car.

So, therefore, the service advisor is most intimately acquainted with what has to be done to the car, so we ask him to assume the primary responsibility to see that the workmanship is performed the way it should be performed and that there be no lack of communication between him and the customer or the house and the customer as to what he is paying for and what he is getting for his money, and whether it is performing as it should.

(Deposition of Lou Ehlers.)

Q. Who is it that assigns a specific job to a specific shop employee? A. Our dispatcher.

Q. You are saying the service advisor just writes up the order, what should be done, and the dispatcher dispatches it out to the employee?

A. The dispatcher does the physical dispatching to the service people, yes.

Q. How is that handled? How was the subject of work assignment handled under GM? [80]

A. I would say similarly.

Q. In connection with the road testing statement that you made, is the service advisor expected to actually go out and road test himself?

Q. Yes, he is.

Q. Do you know whether he did this at all under the GM management?

A. To my knowledge, he did not.

Q. Is there any other specific that comes to mind now in connection with a change in working conditions other than wages and hours?

A. Not that come to mind right now.

Q. Let's take hours, then. You have already told us a little something about hours in your testimony that you expect an employee to stay maybe up to a maximum of an hour to finish a job whereas your understanding is that they would walk out at 4:30 on the button under the previous management.

Now, other than that is there any difference in the normal hours that an employee will work?

A. Well, I think so to this extent, and this is purely voluntarily. Our foremen and managers arrive at the service department considerably earlier than what they

(Deposition of Lou Ehlers.)

used to under GM, and our mechanics have gotten to know this, so they are capitalizing on the fact that they are able to get into their work stalls earlier and on our [81] carry-over work, that is, work that we were not able to accomplish today, they come in early the next morning, knowing that that job is assigned to them and that they can get into their stalls and that the air compressors are all turned on in the building and the lights are on, that they could start as early as 6:30 to 7:00 o'clock in the morning.

So while I don't personally get there at that hour, I am told that a rather sizeable number of our people do report in much earlier than the official 8:00 o'clock starting time.

Q. 8:00 o'clock is the required time?

A. Yes.

Q. What is the closing time? A. 4:30.

Q. 4:30? A. Yes.

Q. To your knowledge, were those the normal hours under GM? A. Yes.

Q. What about Saturdays? A. No Saturdays

Mr. Lund: May I ask a question about the swing-shift? There was mention earlier about a swingshift.

Mr. Ansell: I didn't hear it, no. He mentioned night sales, I believe. [82]

The Witness: Night service.

Mr. Ansell: Q. Night service. Excuse me. Is there a nightshift there?

A. Yes.

Q. Tell us about that.

A. Well, that is Dave Lovejoy, whose name I gave you as a supervisor in the shop.

(Deposition of Lou Ehlers.)

Q. Do you have a nightshift every day?

A. Monday through Friday.

Q. That goes during what hours?

A. 4:30 p.m. until 1:00 a.m.

Q. Is it just the shop that is open or sales and shop?

A. I have to answer it this way: The shop is open the hours I just mentioned. The sales department is open until 9:00 p.m. each night, except Saturday, when it closes at 5:00.

Q. All right. Was there a nightshift, if you know, under GM?

A. There was not.

Q. Are you sure of this?

A. I have no—yes, I would say I am sure.

Q. Do you know whether sales was open in the evening?

A. Yes, they were.

Q. Under GM?

A. Yes, sales was open. [83]

Q. Was that 9:00 o'clock?

A. To my knowledge.

Q. But you are saying that, to the best of your knowledge, there was no nightshift for shop employees under GM?

A. I am confident of this.

Q. Now, this is, of course, I appreciate, a rather broad question. I am now talking about compensation. Would you say generally that the change in compensation is that the amount allowed per hour is different under your management than it was under GM, you just changed the amounts?

A. Yes.

(Deposition of Lou Ehlers.)

Q. But is the method of payment still that you will follow pretty much the suggested time allowance put out by GM, but just pay your own rate that you decide upon by hour?

A. Yes, that's pretty much so, with the exception that I mentioned earlier the new cars.

Mr. Lund: And the supplemental list.

The Witness: And the supplemental list.

Mr. Ansell: A. In other words, that there might be a change from time to time on what your company, as a matter of policy, will allow per hour—oh, you are talking about the way it was under GM.

A. Yes.

Q. I see. [84]

A. In other words, GM had a predetermined supplemental list and established higher than normal amounts to be paid for the items contained on that list, and then GM had a different arrangement, as I have recited earlier, in the method that they compensated their new car set-up men than we do.

Q. I am not clear on that. Are you referring to the possibilities of blemishes, the fact that more time would be required to get a new car ready?

A. Well, we are getting off into kind of a broad field here.

Q. Tell me what you mean by a change in the new car method of compensation from what it was under GM.

A. Well, Herb, I have that in there. If you want me to repeat it, I will be glad to do it. Can we go off the record and tell you what it is?

Mr. Ansell: Off the record.

(Deposition of Lou Ehlers.)

(A discussion was had off the record.)

Mr. Ansell: Back on the record.

Q. We are talking about compensation now.

As I understood from our off-the-record discussion, the principal change in the method of compensation—I am not talking about the amount now, but in the method of compensation from your dealership as compared to what it was under GM—is, for example, in connection with new cars, that if a new car has been gotten ready [85] and is returned with some complaint, under your dealership it is returned to the same employee that got the car ready in the first instance and he is expected to make it good without any extra pay; is that right?

A. With exceptions. Now, if the complaint is one that developed as a result of what the mechanic was supposed to have done in the make-ready, then he performs this at no charge. If the complaint is one of a parts failure or a failure beyond the mechanic, then this is an entirely different matter and he is compensated for it.

Q. So he will get his money if it is not chargeable time; is that right?

A. Yes.

Q. Whereas under GM if there was a complaint on a new car, it would be returned and then assigned out to some employee which might be the same employee that did the work initially and it might not; is that correct?

A. That is right.

Q. Also in connection with the blue coral operation which you have defined off the record as a waxing or sealing operation, the main difference seems to be that

(Deposition of Lou Ehlers.)

there isn't a supplemental list any more and that you will review complaints that are made by the employees, but you don't change the rates that you have assigned quite so readily? A. That is correct. [86]

Q. Is that the way you understood it was done under GM?

A. That is correct.

Q. In addition to those two items, are there any other changes that you can think of as to a difference in method of compensation?

Mr. Lund: Did you put people on incentive before? How about washers?

The Witness: It's my impression that everyone was on an incentive plan under GM, they are likewise under an incentive plan with us, so I don't believe there has been any change in this area.

Q. So you have told us about all the changes in compensation now. Can we leave that subject?

A. I think so.

Q. All right.

Mr. Lund: We are not talking about rate.

The Witness: He is not talking about rate.

Mr. Ansell: Q. I wasn't particularly concerned with the rate. I assume that you have made some change in the percentage or in the amount of money that you allow per hour; is that correct?

A. That's correct. We have increased it.

Q. What was the source of your new help other than the people that you—I think you said in your affidavit that you believe you hired some eleven shop employees that [87] were formerly on the payroll.

How did you get the rest of them? What means did you use?

(Deposition of Lou Ehlers.)

A. We used an ad in the Los Angeles Times. We used, I guess I would have to say, the acquaintanceship route on the part of our supervisory force who knew of employees, good employees, who would meet our standards that were working at other dealerships and we endeavored to use an employment service that presumably specialized in automotive help, but I can't say that the latter actually produced any people.

Q. As you think back, where do you think you got the bulk of the rest of the work force?

A. From both the newspaper ad and the acquaintanceship route.

Q. Let me hand you this document, and I will ask you if that is a true copy of the ad that you ran in the Los Angeles Times? A. Yes.

Mr. Ansell: Would you mark that as Exhibit F.

(The document referred to was marked by the Notary Public as Petitioners' Exhibit F for identification, and is attached hereto.)

Mr. Ansell: Q. Does Mr. Graham set the policy by and large for the shop department, referred to loosely as the service and maintenance, get-ready, parts, anything [88] connected with service and maintenance of an automobile?

A. I would say that Mr. Graham and I discussed what policies would be acceptable to us as the new dealer, and he helped formulate some of the policies. I did others. And we decided on what was mutually agreeable and he enforced them.

Q. The enforcement would be through him?

A. Yes.

(Deposition of Lou Ehiers.)

Q. Have you issued any policy memoranda since June 1st, any type of notice that you drafted that was set up on the bulletin board or letters to the employees, anything in writing, or to supervisors?

A. Yes. We initially issued a bulletin outlining the company's hospitalization, disability, sickness and insurance program.

Q. Was this something that was put on the bulletin board or given to each employee?

A. It was distributed to each employee.

Q. Was this shortly after June the 1st?

A. I had meetings with the employees—

Mr. Lund: Just a moment. You are not answering the question. The question was: Was that bulletin distributed shortly after June 1st?

Mr. Ansell: I will go into the question of meetings.

Mr. Lund: He wouldn't have thought about it if you hadn't brought it up. [89]

Mr. Ansell: Yes. That's the next question.

The Witness: Well, shortly after—the only reason I am answering this way, my memory says about the last week of June is when I distributed this.

Mr. Ansell: Q. Do you have a copy of this document that you distributed to the employees?

A. Not with me.

Q. Was there anything else? Let me ask you this: This document that you have mentioned, was it confined solely to a statement of the benefits, the employment benefits that the people would get, the basis of compensation and the various—

Mr. Lund: An insurance program was all it was.

Mr. Ansell: Q. Just strictly the insurance program?

(Deposition of Lou Ehlers.)

A. Insurance, hospitalization and disability, covered all three.

Mr. Lund: Mr. Ansell and I call that insurance.

The Witness: Oh.

Mr. Ansell: Q. All right. In addition to that was there any other memoranda issued?

A. Yes. We issued a bulletin to our new car foremen and our AFA clerk, our DMV girls, our office manager, our sales manager, covering procedures for the checking in of new cars and their ultimate disposition in the building and their make-ready procedures, be about a three-page bulletin. I am sure you don't want me to go [90] into the details of it.

Q. Well, do you have that with you?

Mr. Lund: No, I don't.

The Witness: No.

Mr. Lund: I don't think it was called for by the subpoena. I may have misread it. I went over it with Mr. Ehlers.

Mr. Ansell: I am referring to number ten, referring to records, notes, memoranda of any type relating to mode and method of operating the maintenance of new car get-ready service at 5151 Wilshire.

Mr. Lund: These bulletins he is talking about, as I understand it, do not pertain to new car get-ready?

The Witness: Yes, they do.

Mr. Ansell: That's what I thought.

Mr. Lund: They do?

The Witness: I can show you a copy.

Mr. Ansell: Q. Why not do that. I am not looking to continue the thing, but can we have an understanding that if after I inspect it, I want to ask him a question or two—

(Deposition of Lou Ehlers.)

Mr. Lund: About that.

Mr. Ansell: —related to that document, we can get together and continue the deposition for that purpose?

Mr. Lund: Yes. Shall I send it to the reporter then?

Mr. Ansell: Yes. [91]

Mr. Lund: Do you want to mark it?

Mr. Ansell: Is it just one or are you referring to one specific three-page memoranda or has there been more than one? I guess there have been several of them.

Mr. Lund: Let's make it G, and we will go G-1, 2, 3, if more than one.

Mr. Ansell: Will you just designate all of the documents that are sent to you?

Perhaps they will be sent to you under a covering letter describing them.

Mr. Lund: I will mark them G-1.

The Witness: Your question again is restricted to those pertaining to our shop operation. You wouldn't care about a bulletin covering a sales procedure?

Mr. Lund: No.

Mr. Ansell: The subpoena didn't call for that. I am just talking about the shop, that's right, and just mark those in accordance with the way Mr. Lund designates them, G-1, 2, 3, and so forth.

(Whereupon, at a later date the above-referred to documents were marked as Petitioners' Exhibits G-1, G-2, G-3, G-4, G-5, and are attached hereto.)

Mr. Ansell: Q. Have you had any meetings with the employees yourself wherein you spoke to them orally?

A. Yes. [92]

Q. Do you recall how many meetings you had?

A. Personally?

(Deposition of Lou Ehlers.)

Q. Yes. Well, all right. Where either you spoke or you attended and Mr. Graham spoke or some other supervisor.

A. I would say I had approximately three personal meetings with the employees.

Q. Did you speak at all of these? A. Yes.

Q. Do you recall when the last one was?

I will withdraw that question.

What was the subject of these meetings? Can you tell us, in general?

A. Yes. The first meeting was to—I more or less introduced myself and gave the people a little background about me, what I had done in life, and how old I was, my little personal history.

Q. This was after June 1st?

A. Yes, after June 1st. And told them—

Mr. Lund: The subject matter.

The Witness: Pardon?

Mr. Lund: I don't want you to give a speech. Generalize.

Mr. Ansell: Q. Well, I am primarily concerned, to save time, with the general subject, the topics you discussed, and then if one is of interest to me in particular, [93] I might ask you about it.

A. All right. I think I have just said this, I gave a personal background, my own philosophy of operation. I told the people what we are going to expect as an employer and the fact that our front door is always open to them for any and all suggestions, if they can't resolve it through their immediate subordinates.

Mr. Lund: Superiors.

(Deposition of Lou Ehlers.)

The Witness: Superiors. I told them that we were planning an insurance program and that as quickly as time permitted us to assemble a bunch of competitive plans, we would present it to them, and stressed in very emphatic terms the necessity for quality workmanship, cleanliness, that we frowned upon having to do the same job twice, and matters of this kind.

Mr. Ansell: Q. Does that, in substance, encompass the subject matter of your three meetings?

A. I think so.

Q. Aside from accessories and the usual parts that you will purchase from time to time, you know that you will use in connection with your operation, has the Lou Ehlers Cadillac Company purchased any major equipment since June 1st?

By that, for example, vacuum cleaners, electric drills, drum lathes, things of that sort.

A. Yes, I would say we have. I would have to put [94] my thinking cap on, from all the turmoil I have been through, and enumerate each item, but I can give you some.

Mr. Ansell: Do you have any records here, referring now to number eleven on the subpoena?

Mr. Lund: No, we don't have any records here, because it's too broad of a request. We will give you anything you want in that area, but you can appreciate that it's quite a burdensome thing to cull out exactly what you are asking for.

Mr. Ansell: Well, Dick, I don't know what I want until I see what you purchased, you see.

In other words, I don't have any idea what type of equipment Mr. Ehlers might have purchased.

(Deposition of Lou Ehlers.)

Mr. Lund: Why don't you approach it this way? He started to give you some highlights. If you want something more specific, we will be glad to supply it.

Mr. Ansell: All right. Let's start it that way then.

The Witness: We bought a Sun tune-up equipment to the tune, I guess, of in the neighborhood of \$1,500.

Mr. Ansell: Q. Tune-up equipment?

A. Tune-up equipment.

Q. Do you recall specifically what kind of equipment?

A. Sun, S-u-n, a very common name in the automotive service. [95]

Q. Okay.

A. We have purchased new vacuum cleaners, two of them, in fact; one mobile one and one that is on wheels and you push it. It's a tremendous machine that vacuums huge areas. We have purchased a big tank-type cleaner for automobiles and building maintenance.

Q. What do you mean a tank-type cleaner?

A. Well, it's a big upright tank. It's a commercial type cleaner that probably costs \$350 as opposed to a \$75 vacuum cleaner. It's a commercial grade cleaner. We have bought—oh, gosh, I will just have to think.

You want me to stay just with shop equipment or do you want me to go into other areas, like building areas that we found bad? Do you want me to go into this?

Q. Building areas?

A. Yes. For example, the lights, all the ballasts were out of our lights in the building. We had to replace all the ballasts. We had to replace all the tubes. Do you want to hear all this?

(Deposition of Lou Ehlers.)

Q. Well, I think you can confine it to equipment used in connection with service and maintenance of vehicles. A. The service and maintenance?

Q. Yes. By that I am using it in the broad sense again, new car get-ready, everything in the shop.

A. I see. I think I could best answer your question by returning to my office and having a list made and [96] submitting it to you. My memory is not as good as I would like it to be in all these areas, because I know we bought a lot of things and I know you don't want me to get down to 12 cent items.

Q. I said major.

Mr. Lund: How about H?

Mr. Ansell: Yes.

Mr. Lund: List of equipment purchases.

Mr. Ansell: Yes. Do that, and will you submit the date of the purchase and any detail you can give to me on it, where the equipment was purchased, a description of the thing purchased. I guess that's enough.

Mr. Lund: H is the list of equipment purchased since June 1.

Mr. Ansell: Yes.

Mr. Lund: For the shop.

Mr. Ansell: And you might describe briefly what the machinery is used for.

The Witness: Yes. Does it matter if it has the exact date as long as it is after June 1?

Mr. Ansell: Well, get it as close as you can.

(Whereupon, at a later date the document containing the information referred to above was marked by the Notary Public as Petitioners' Exhibit H for identification, and is attached hereto.)

[97]

(Deposition of Lou Ehlers.)

Mr. Ansell: Q. As a result of your transaction with General Motors did Lou Ehlers Corporation or yourself personally acquire an interest in any other properties besides the 5151 premises, any other real property? A. No.

Q. Permits? Did you acquire any permits as a part of the transaction? A. Not to my knowledge.

Mr. Ansell: Do you know, Dick?

Mr. Lund: No. As far as I know, they did not.

Mr. Ansell: Q. Licenses? A. No.

Q. Trademarks, tradenames? A. No.

Q. Did you acquire any stock in the General Motors Corporation or any of its subdivisions as a result of the transaction? A. No. I wish I had.

Q. Did you incur any of the monetary liabilities of General Motors as part of the transaction?

A. No.

Q. Were there any existing contracts that you were carrying yourself, that you took over, any existing automotive contracts?

A. I am not sure I understand that question.

Mr. Lund: I think you will find it all covered by [98] that basic agreement.

For instance, there were some purchases that were in the process of completion by GM and we undertook to finish the purchases.

Mr. Ansell: You mean purchases of what?

Mr. Lund: Of new cars by customers.

Mr. Ansell: Q. In other words, you would carry the paper on those; is that right?

A. No, we wouldn't carry the paper.

(Deposition of Lou Ehlers.)

Mr. Lund: They were contracts of purchase and they turned them over to us.

Mr. Ansell: Well, that's what it would be. You would have purchased the existing contracts that would be part of the whole transaction?

Mr. Lund: We took them over.

Mr. Ansell: Q. I assume you subsequently would sell those to the banks at some kind of an arrangement, whatever the arrangement was; is that right?

A. Yes.

Q. Do you recall at this time approximately how many such contracts your purchased as part of the overall deal?

Mr. Lund: It is in the list.

The Witness: It is recorded.

Mr. Lund: You have got a list of them. [99]

The Witness: Ten or so.

Mr. Ansell: Pardon?

The Witness: Ten or so, from memory. You would have to check it, though.

Mr. Ansell: Q. Were any customer lists turned over to your company by General Motors as a result of the transaction, that is, a list of persons who had purchased Cadillacs in the past, who you might subsequently send notices to or advertisements?

A. I believe that those lists were all maintained downtown and what they might have volunteered to give us. I have not personally checked and don't know.

Q. You don't know whether they gave you any customer lists or not?

A. They gave us some lists after we inquired, but no one seems to quite know what this list is, whether

(Deposition of Lou Ehlers.)

it's a part of the owner's or whether it embraces competitive makes of cars. I just have not personally had the time to examine it to answer your question.

There would be a partial list, I am sure.

Q. When you say "partial," don't you believe at this time that you were furnished with at least what purported to be the name of every person who ever bought a Cadillac in the last seven years from the 5151 branch?

A. I can't honestly answer that. It seems from memory that with all the major accounting being done at [100] Seventh and Bixel, all the records were kept there and to what extent they separated these, in order to give us the benefit of the list of owners that were sold previously by Cadillac, I can't vouch for. I just don't know this.

Q. But do I understand you to say that you believe you got some information in that regard, you got the names of some of the customers, some of the people that purchased Cadillacs?

A. Yes, I am confident there are some, but to what extent this is accurate or what proportion it represents of the total sales by GM-Wilshire, I wouldn't begin to tell you, because I really don't know.

Q. You don't know whether it is accurate or not?

A. No.

Q. You don't know how complete it is?

A. I do not.

Q. But you got some information, some names and addresses?

A. Yes. I think they had an absolute type of card file that was kept up and wasn't kept up.

(Deposition of Lou Ehlers.)

Q. Was that turned over to you?

A. In part, at least to the best of our knowledge. This is the portion Wilshire was entitled to, but we have no way of verifying it.

Q. Well, let me ask this: Is it your understanding that General Motors attempted at least to furnish you with [101] the names of customers of 5151 Wilshire?

A. We asked for it, and what we got, no one seems to really be able to decipher.

Q. You got something?

A. We got something, but we certainly question whether it had any high degree of accuracy to it or the percentage of the true number of sales made.

Mr. Lund: Let's break here.

(Recess)

Mr. Lund: We are reserving Exhibit I for a copy of the June 1, 1965 assignment by Lou Ehlers to Lou Ehlers Cadillac of his interest in the May 12, 1965 agreement.

The Witness: Assignment from me to—

Mr. Lund: To Lou Ehlers Cadillac.

(Whereupon, at a later date the document referred to was marked by the Notary Public as Petitioners' Exhibit I for identification, and is attached hereto.)

Mr. Ansell: Q. You have alleged on page 3, starting with line 25 of your declaration, "During the month of May, 1965, many of the salesmen of GM," et cetera, et cetera, and "a number of other persons," et cetera, "stated to me that the Cadillac repair service," et cetera, "was very unsatisfactory. This was confirmed to me by the service shop supervisors of GM."

(Deposition of Lou Ehlers.)

Have you at any time received any correspondence [102] from any source to the effect that service and maintenance work prior to June 1 was unsatisfactory at 5151 Wilshire?

A. Have I personally received it?

Q. Right. A. No.

Q. Have you sent anything in writing to that effect?

A. I saw several complaints, either—I would say this would be sort of the latter part of May, that our salesmen—not our salesmen, but GM salesmen would bring to me and say, “Well, here’s an example of what I am talking about.” He would have a complaint from a customer in writing and, of course, I had no portfolio at the time, so obviously the letters didn’t come into my—all of them didn’t come in to my personal attention. They would have gone back through the GM procedure and have the shop service manager or the customer relations manager resolve the complaint, because it was against Cadillac and not Lou Ehlers.

Q. Do you have any of these documents with you right now?

Mr. Lund: He doesn’t have them. He said the salesmen showed them to him.

Mr. Ansell: All right. I am referring now to item seven on the subpoena.

Mr. Lund: We don’t have anything in writing under item 7. [103]

Mr. Ansell: Q. Let me ask you this: Outside of these letters that were shown to you from time to time, as you have testified, by salesmen, is there any other written correspondence from any source relating to the

(Deposition of Lou Ehlers.)

quality of service and maintenance work prior to June 1st? A. You mean addressed to me?

Q. Addressed to anybody, anybody at the establishment, relating to the quality of the work.

A. What I just mentioned, Herb, is what I know of.

Q. That's all you know of?

A. Yes. The salesmen would show me these, as I recall, and I think possibly Erv Graham showed me a few in their possession prior to my becoming a dealer.

Q. Let me ask you this: Do you know what happened to those letters that were in the possession of Mr. Graham and some other people that showed them to you? A. I really don't know what happened.

Q. You don't know whether they were put in the file or something like that, some type of portfolio?

A. I could look, but I don't know.

Q. Well, let me ask you this: In relation to item 7 of the subpoena did you either—

Mr. Lund: Why not read him item 7?

Mr. Ansell: Q. All right. Item 7 calls for any and all records relating to correspondence or memoranda relating to the statement on page three, line 25, which I [104] read to you previously, Lou Ehlers' declaration that complaints had been made that the Cadillac repair service was unsatisfactory prior to May 28, 1965.

Now, in preparation for this proceeding today did you search the records that you have there to see if there was anything in writing, any type of correspondence—

Mr. Lund: Wait a minute.

Mr. Ansell: Q. —relating to customer complaints?

Mr. Lund: Let's clarify it. The declaration, as I understand it, as I read the declaration, was that he was

(Deposition of Lou Ehlers.)

talking about complaints to him by a number of persons that the Cadillac repair service had been unsatisfactory, and you were asking for any such complaints that he received in writing, and the answer is there were none.

Mr. Ansell: Well, it's a little broader than that, Dick. All records relating to correspondence or memoranda relating to the statement that—

Mr. Lund: Relating to the complaints made to him.

Mr. Ansell: Well, I don't read it that way. I mean I think it would embrace—we use that as a frame of reference, because he said that he made that statement in his declaration, but I mean anything in writing dealing with the subject of poor workmanship on the automobile.

Mr. Lund: Actually anything other than what information was given to him, the complaints to him by these [105] other persons that he mentioned in his declaration is all that is material. Nothing else is material. Whether the complaints were even true or not is not material.

Mr. Ansell: No. But I am asking him to look at them.

Mr. Lund: It was all oral, as far as he was concerned.

Mr. Ansell: But I am interested in whether there is anything in writing concerning the fact of poor workmanship.

Mr. Lund: I am sure Cadillac must have kept and maybe you have something at your place—I don't know. Cadillac certainly must have a file of their complaints from the customers.

Mr. Ansell: Obviously you can't produce anything that Cadillac has kept.

(Deposition of Lou Ehlers.)

Mr. Lund: If he has any of Cadillac's files on that score. That was not subpoenaed, and it's not material. Whether, in fact, their service was good or bad is not material. The only question is what was this gentleman's understanding of what the—

Mr. Ansell: Well, he has alleged in this affidavit that he understood the work was bad.

Mr. Lund: He was told, people complained to him that the service was poor. That's all, as far as it went and as far as we have to go.

Mr. Ansell: Doesn't your answer make some reference [106] to that, too?

Mr. Lund: I don't know whether the answer says it in that way or some other way. If it does, it states it another way, then I will amend it. Nothing else is material.

Mr. Ansell: Q. Well, let me ask you this: Can you state at this time that you do not have any written memoranda, notes, letters of any sort in the records of the company—I mean your company, not GM—to the effect, dealing with the subject of the quality of workmanship prior to June 1, 1965?

A. I do not personally have any such documents, but am willing to search my files to determine whether any might be left and I have found some GM Documents.

Mr. Lund: The postcards you showed the other day.

The Witness: Yes. I can show you this in reverse, if it would be helpful to you. We have inaugurated a program of giving out a self-addressed postcard to everyone of our service customers and asking them to comment on our service, and there is space on it for their own personal comments in addition to checkmarks,

(Deposition of Lou Ehlers.)

where we ask whether they have been greeted promptly, whether the workmanship has been satisfactory, et cetera, and in the comment portion we have a number of volunteers who have said, "Decided improvement," or words to that effect over the previous service. [107]

Mr. Ansell: Q. You have those at your establishment? A. I have those in my possession, yes.

Q. Aside from these postcards, is there anything else you know of? A. No.

Q. Can you go so far as to say there isn't any, that your company doesn't have, aside from these postcards, anything in writing dealing with the subject of the quality of workmanship prior to June 1, 1965?

A. No, I would not want to go that far, because I would want first to go back and talk to the salesmen as a group and ask them to refresh their memory in this area, ask if they know the whereabouts of these letters they first showed me.

Q. I am just wondering, I can see item 7, Dick, might be construed relating to information that he personally had.

Mr. Lund: As I said, anything else is immaterial. Whether the Cadillac service was actually the world's best or the world's worst before June 1st is not material.

As I understand it, under this case, the question would be what was Mr. Ehler's belief or understanding as to how the service was.

Mr. Ansell: Q. Well, let me ask you this: Aside from the letters that were shown to you by salesmen, you [108] haven't seen anything else in writing except these postcards?

(Deposition of Lou Ehlers.)

Mr. Lund: Prior to June 1st or as of June 1st?

Mr. Ansell: As of June 1st.

Mr. Lund: As of June 1st?

Mr. Ansell: Yes.

Mr. Lund: Well, the postcards related—

Mr. Ansell: The postcards were subsequent to June 1st.

The Witness: Yes.

Mr. Ansell: Q. So as of June 1st your only source of information as to the quality of work prior thereto was what either Mr. Graham told you or some other supervisor or salesman? A. And customers.

Q. You spoke to customers?

A. I circulated very extensively in the service area whenever time permitted me to do this prior to my actual taking over.

Q. How many times did you do this?

A. I suppose a dozen.

Q. You were out there on a dozen occasions?

A. Yes.

Q. Do you have any way of affixing the approximate dates when you did this? This is all prior to June 1 now.

Mr. Lund: Clarify it. I think, Herb, I suspect, without [109] knowing, probably two weeks before June 1st you were probably there most all the time, weren't you?

The Witness: Yes.

Mr. Ansell: Q. You were there pretty regular?

A. Oh, yes, just as though I were working.

Q. Did you make your own personal note or memorandum of any discussions you had with customers during that period of time?

(Deposition of Lou Ehlers.)

A. No. The only documentation I have is when I was trying to resolve one complaint. I still wasn't officially a dealer. I had another man approach me with a complaint when he found out who I was and—

Q. My question is: Did you make any—

A. I know I seem to be digressing I am coming to it.

Q. Well, let me just ask you this first. Did you reduce any of these things to writing, these conversations, your own personal note or memoranda?

A. Yes. I am leading up to it.

Q. Okay. Fine. Go ahead.

A. I was in the process of talking to one customer and I was approached by another who was complaining bitterly about the treatment he had received under Cadillac, and I said to the second man, "Yes, I understand service has left something to be desired here. In fact, I am involved in one complaint right now and if you will please [110] wait until I am finished with this"—and I got about that far in my conversation and it just coincidentally happened that the union business agent—

Q. Mr. Hubert.

A. —Hubert overheard this conversation and he intervened and made the remark, "Well, if you think you have got troubles now, just wait," and I recorded this.

Mr. Lund: Lou, this is after June 1st.

The Witness: What?

Mr. Lund: This is after June 1st.

Mr. Ansell: Q. I think it was, yes.

A. It was after June 1st?

(Deposition of Lou Ehlers.)

Mr. Lund: Oh, yes, quite away after.

The Witness: It was?

Mr. Lund: This is when Bennett called me up.

The Witness: Then to answer your question, no.

Mr. Ansell: Q. All right. Would it be a fair statement to say that any complaints that came to your attention prior to June 1st is a product of your own independent recollection, you are relying upon your own independent recollection as to what those complaints were? Would that be a fair statement?

A. Yes, I would say.

Mr. Lund: What Herb is trying to find—I already pursued this a long time ago with my client. It is all orally and nothing in writing. [111]

Mr. Ansell: All oral. All right.

Q. Do you have an independent recollection, then, at this time as to the names of any customers that you spoke to prior to June 1st?

A. No. I can't say that I do.

Q. Do you have an independent recollection as to the names of any of the service personnel who were involved in the complaint given to you prior to June 1st by customers? I mean hypothetical if, for example, a customer spoke to you on the premises and said, "That man there," and pointed out some personnel and said, "He was supposed to do my brakes and I am having troubles," or something of that sort—

A. The customer would make reference here to the service advisor that wrote the ticket, but saying, "It isn't his fault" type of attitude.

Of course, I felt differently. I felt it was everyone's fault.

(Deposition of Lou Ehlers.)

Q. I appreciate that, but do you have an independent recollection as to my specific service and maintenance personnel that was complicated in a customer complaint prior to June 1?

A. Do you have reference to the mechanic who performed the work, or do you have reference to the intermediary?

Q. The mechanic who performed the work. [112]

A. No, because when a man addresses you with a complaint—

Mr. Lund: You answered it "No."

The Witness: I have no way of knowing.

Mr. Ansell: Q. All right. When you say intermediary, who do you mean now?

A. The service advisor.

Q. Well, of course, you knew there was only one service advisor, so you knew who that was?

A. No, there were six or seven advisors.

Q. Then, let me ask you this: Do you have an independent recollection at this time as to the name of any service advisor that was involved in a customer complaint prior to June 1st?

A. I think it's safe to say that each one would have been involved because of the number of complaints, Herb, that came to me. You could hardly expose yourself out there without just being engulfed with this type of conversation.

Q. How many conversations of this nature did you have with customers on the premises prior to June 1?

A. I would think that there might have been as many as a hundred.

Q. Prior to June 1?

(Deposition of Lou Ehlers.)

A. That I introduced myself to. And if your question is how many complained out of the total number that I [113] might have met in this period of time—

Q. No. I wasn't interested in the total number of people you met, but I was just interested in the number of complaints that you received during that short period of time, that two weeks or so prior to your take-over.

A. I would say in ten working days I must have had an average of five to six complaints per day. This is personally. I don't know of any others. There might have been others, I mean that I personally would indirectly become involved in.

Q. And your source of information for your statement that you understood the work not to be up to par was these conversations that you just told us about plus what Mr. Graham may have told you as well as some other supervisor? A. Yes.

Mr. Lund: And sales.

The Witness: And salesmen.

Mr. Ansell: Q. Do you recall the names of any salesmen that told you something to the effect that the work wasn't what it should be? A. All 19.

Q. All 19? A. Yes.

Q. Okay. Any other supervisor besides Mr. Graham? A. Service advisors. [114]

Q. Do you recall the names of any specific ones?

A. I remember Mr. Lovejoy.

Q. What did he say?

A. He said, "This has been a very, very loosely run operation," and I presume it started by my asking him a question and then he responded by telling me it

(Deposition of Lou Ehlers.)

was a very, very loosely run operation and a lot of people had gotten away with murder and it's just the evils of operating with a big corporation and a union, there's been not enough people saying "no" and putting their foot down at the time they should have, and it just degenerated into a situation where it was, "Well, we will give it to somebody else to do over. So long as mechanic A didn't do it right, we will give it to mechanic B." He, in particular, is one man I recall talking to in this area.

Q. Do you recall the names of any other advisors you spoke to besides Mr. Lovejoy?

A. Specifically, I do not. Yes, I can add one more man to this. That would be Dick Campbell, the dispatcher.

Q. Is he in your employ now? A. Yes, he is.

Q. What capacity? Did we get his name before? I don't recall.

Mr. Lund: No.

Mr. Ansell: Q. Was he on the payroll prior to June 1? [115] A. Yes.

Q. Is he still the dispatcher now?

A. Yes, he is.

Q. And he was before, too?

A. He was before.

Q. What did he say in substance?

A. The very same thing as—different words, perhaps—lovejoy had told me.

Q. I thought we had covered everybody before on the employees. Apparently we overlooked this dispatcher. Are there any other dispatchers?

(Deposition of Lou Ehlers.)

A. We didn't overlook him. I purposely didn't mention his name because you asked me leadmen or supervisors and Dick is not this. He has no authority over anyone. He merely distributes work.

Q. Does his name appear on Petitioners' Exhibit E, this list you gave me? A. No.

Q. He sort of falls in-between?

A. He is a salaried employee.

Mr. Lund: That list is shop employees, what would correspond to the bargaining unit.

Mr. Ansell: You would consider he is not a shop employee and not a supervisor. That's why he—

Mr. Lund: I am explaining that that list of shop employees corresponds to the bargaining unit under GM. [116]

Mr. Ansell: Q. All right. Are there any other dispatchers besides Mr. Campbell?

A. No. Our service advisors might fill in during his lunch period.

Q. He is the only full time dispatcher?

A. Yes.

Q. I realize this may be a little difficult at this time, but can you think of any other employee who we talked about, any other class of employee who we talked about as being on the payroll before and after that has not been mentioned?

We have mentioned clerical, salesmen, the shop people within the bargaining unit and now the dispatchers and the supervisors. I think we have covered all the supervisors and parts people. Is there any other category? A. Did we cover the service advisors?

Mr. Lund: You mentioned the six of them.

(Deposition of Lou Ehlers.)

The Witness: We covered them, I think, by simply saying GM had six or seven advisors.

Mr. Ansell: Q. You have how many now yourself? A. Five.

Q. Let me ask you this: Were those five previously employed by GM?

A. As of today there will be no remaining GM.

Q. As of June 1st?

A. As of June 1st? I think we employed in total, [117] the service advisors that were previously on GM's payroll.

Q. Is there any other category you can think that we may have overlooked here? A. I don't believe so.

Q. I think we are just about through here. One other question.

Did you prepare or cause to be prepared a pamphlet to be distributed to potential customers of Lou Ehlers Cadillac explaining your side of the trade dispute that is going on? A. Yes, we did.

Mr. Ansell: By any chance, do you have a copy with you today?

Mr. Lund: Not an extra one. I have a copy. You have got it.

Mr. Ansell: Is there one that I can look at for reference?

Mr. Lund: Yes.

The Witness: We only prepared one, didn't we?

Mr. Lund: Yes, but I meant he has it in his file.

Mr. Ansell: I have it some place in my file, and I appreciate that.

Mr. Lund: Yes, I think I have got one with me.

(Deposition of Lou Ehlers.)

Did we bring that out in one of the other depositions and make it an exhibit?

Mr. Ansell: I don't think so. [118]

Mr. Lund: Yes, Respondent's Exhibit 30.

Mr. Ansell: Oh, that was Respondent's Exhibit 30?

Mr. Lund: Yes.

Mr. Ansell: Q. All right. Let me just ask you this. Let me show you this document, and I will just ask you if these are the documents that you caused to be prepared and distributed to your customers.

A. Yes.

Mr. Lund: Why don't you refer to it as Respondent's Exhibit 30 in the Hubert deposition?

Mr. Ansell: Respondent's 30 in the Hubert deposition.

Mr. Lund: Respondent Ehlers' Exhibit 30 in the Hubert deposition.

Mr. Ansell: Yes. May I see that for just a moment, please?

Mr. Lund: Let's take a two-minute recess.

(Recess)

Mr. Ansell: Q. I will ask you one question with regard to the pamphlet that we have been referring to that was identified as Respondent Ehlers' Exhibit 30 attached to the Hubert deposition. It bears a date of June 12th. The source of your information for the statements that you made here about customer dissatisfaction, and so forth, I assume is what you have already described to us, namely, the conversation that you had with people the last couple of weeks, and that is all the information that you had at your [119] disposal? A. Yes.

(Deposition of Lou Ehlers.)

Q. Plus what you heard from salesmen and the supervisors; is that right? A. Yes, that's correct.

Mr. Ansell: All right. I have no further questions.
Any Notary.

Mr. DeLuce: Yes.

Mr. Lund: Any Notary.

(Recess)

Mr. Ansell: Back on the record. Before we proceed with the deposition of Mr. Graham, I will just note that counsel has handed to me a specimen copy of the Franchise agreement executed between Lou Ehlers Cadillac and General Motors. We have previously reserved the space as Exhibit D for this document, and I am not going to give this to you, but I will take the document and look it over and decide what disposition to make of it thereafter.

Mr. Lund: And the document in your hand, however, is to be returned to me.

Mr. Ansell: Yes. The document is to be returned to Mr. Lund.

Witness [120]

Admitted in Evidence 2-23-66.

State of California, County of Los Angeles—ss.

I, Mark T. Neville, CSR, a Notary Public in and for the County of Los Angeles, State of California, do hereby certify:

That prior to being examined, the witness named in the foregoing deposition, to wit, LOU EHLERS, was by me duly sworn to testify the truth, the whole truth and nothing but the truth;

That said deposition was taken pursuant to annexed subpoena at the time and place therein named, and was taken down by me in shorthand and thereafter reduced to typewriting under my direction.

I further certify that I am not interested in the event of the action.

Witness my hand and seal this day of, 1965.

Notary Public in and for the County
of Los Angeles, State of California. [121]

Admitted in Evidence 2-23-66.

GENERAL COUNSEL'S EXHIBIT No. 3-A.

THIS AGREEMENT, made this 12th day of May, 1965, by and between GENERAL MOTORS CORPORATION (Cadillac Motor Car Division), hereinafter called "Seller", and Louis W. Ehlers, of Los Angeles, California, hereinafter called "Buyer",

WITNESSETH:

WHEREAS, Seller has operated a Cadillac branch retail store for the sale of Cadillac motor vehicles, parts and accessories and the service of such motor vehicles at 5151 Wilshire Boulevard, in Los Angeles, California, and desires to discontinue such operations as of June 1, 1965; and

WHEREAS, Buyer and Seller desire to effect a transfer to Buyer of certain of the assets and possession of the premises owned or used by Seller in such operations, so that Buyer may commence operations as an authorized Cadillac dealer thereat effective as of the date and time fixed in Paragraph ELEVENTH of this Agreement for closing of the transactions contemplated hereby (hereinafter called the Closing Date);

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, the parties hereto have agreed and do hereby agree as follows:

FIRST: Seller will discontinue all of the Cadillac retail sale and service operations currently conducted by it at the premises covered under Paragraph SECOND of this Agreement (hereinafter called Seller's Branch Operations), on or prior to the Closing Date and will execute with Buyer a Cadillac Direct Dealer Selling Agreement having a term of five (5) years, with such Sell-

ing Agreement to be subject to such conditions relating to the execution thereof by either party as may be agreed upon by Buyer and Seller.

SECOND: Commencing as of the Closing Date, Seller will sublease to Buyer, for use by Buyer in Buyer's operations as an authorized Cadillac dealer, the premises described in the form of Sublease attached hereto as Exhibit "A", with the definitive Sublease to be executed by Seller and Buyer to contain the terms and provisions of such form of Sublease, except for such changes in such terms and conditions as may be mutually agreed upon by Buyer and Seller prior to the execution of a definitive Sublease.

Possession of the premises covered by the Sublease to be executed by Buyer and Seller shall be delivered by Buyer to Seller on the Closing Date.

Buyer shall make available to Seller for a reasonable period following the Closing Date a reasonable amount of office space at the premises covered by the Sublease for use by representatives of Seller for the purpose of completing the closing and termination of Seller's operations thereat contemplated by this Agreement.

THIRD: Based on a physical inventory made as of or prior to the Closing Date, Buyer and Seller will agree upon a list of the items of leasehold improvements made by Seller at the premises described in the Sublease provided for in Paragraph SECOND of this Agreement. The cost of such leasehold improvements remaining unamortized by Seller upon its books as of the Closing Date shall be factored into the amount of rental payable by Buyer under the Sublease provided for in Paragraph SECOND of this Agreement, or such Sublease

shall otherwise provide for reimbursement to Seller by Buyer of such unamortized amount.

FOURTH: Based on a physical inventory to be made by Buyer and Seller which shall be adjusted as of the Closing Date, Buyer will purchase from Seller all of Seller's right, title and interest to the following items of personal property located at or used by Seller in connection with Seller's Branch Operations:

A. Seller's fixed assets, including machinery and shop equipment, parts and accessory equipment, furniture and fixtures (including signs usable by Buyer) and service cars, but excluding leasehold improvements, at prices representing the fair market value thereof to be established by Buyer and Seller prior to the Closing Date, or if Buyer and Seller cannot agree upon a price for any item of fixed assets, the price thereof, representing its fair market value, shall be established within ten (10) days after the Closing Date by an independent appraiser to be selected by agreement between Buyer and Seller.

B. Company cars, including cars used for demonstration purposes and used cars used or acquired by Seller in connection with Seller's Branch Operations, at prices representing the fair wholesale market value thereof to be established by Buyer and Seller prior to the Closing Date, or if Buyer and Seller cannot agree on the price of any such car, the price thereof shall be established within ten (10) days after the Closing Date by an independent appraiser to be selected by agreement between Buyer and Seller.

C. All new and unused Cadillac motor vehicles and chassis of the current model on hand at Seller's Branch Operations, at the factory's list price therefor, less the

applicable factory base discounts thereon and plus applicable factory destination charges and charges for special equipment thereon.

D. All unused and undamaged Cadillac parts listed in Cadillac's current Dealer Parts and Accessories Price Schedule, and on hand at Seller's Branch Operations, at the then current dealer prices therefor, exclusive of transportation charges.

E. All unused and undamaged Cadillac accessories acquired by Seller in connection with Seller's Branch Operations for use on current model Cadillac automobiles, at the then current dealer prices therefor, exclusive of transportation charges.

F. All other unused and undamaged Cadillac parts and accessories at a price representing the fair wholesale market value thereof to Buyer as established by Buyer and Seller prior to the Closing Date, or if Buyer and Seller cannot agree on the price to be paid for such parts and accessories, the price thereof shall be established within ten (10) days after the Closing Date by an independent appraiser to be selected by Buyer and Seller.

G. Special tools designed specifically for service of Cadillac motor vehicles and acquired by Seller for use at Seller's Branch Operations, at prices representing the fair market value thereof as established by Buyer and Seller prior to the Closing Date, or if Buyer and Seller cannot agree on the price to be paid for such special tools, the price thereof shall be established within ten (10) days after the Closing Date by an independent appraiser to be selected by agreement between Buyer and Seller.

H. Gas, oil and grease, new tires and tubes at the then current wholesale cost thereof.

I. Paint material on the basis of the physical inventory of full cans at the then current wholesale cost thereof, without charge for open cans.

J. Undercoating on the basis of a physical inventory of both full and open cans at the then current wholesale cost thereof.

K. Miscellaneous supplies and materials in Seller's inventory as of the Closing Date, expensed and used by Seller in connection with Seller's Branch Operations, at a price to be agreed upon by Buyer and Seller but not to exceed Seller's actual cost.

RIDER 6 In addition to the purchase prices to be paid for the items of personal property described above in this Paragraph FOURTH, City, County and/or State personal property taxes which are applicable and allocable to such personal property shall be pro-rated between the Buyer and Seller as of the date of the Bill of Sale for such property irrespective of whether or not such taxes will be billed to Buyer or have been billed to Seller and whether or not Seller may have prior thereto paid all or a portion of such taxes.

Buyer will pay all sales and use taxes applicable to the purchase and use of the personal property being purchased hereunder.

Seller represents that from the date of this Agreement to the Closing Date, it will make purchases of the property described in this Paragraph FOURTH for use in Seller's Branch Operations only in the normal course of its business and that it will make no unusual purchases of this property during said period.

FIFTH: Seller hereby indemnifies Buyer against any and all claims of creditors of Seller which may be asserted against Buyer or the property described in Paragraph FOURTH hereof because of Buyer's or Seller's failure to comply with the provisions of the laws of the State of California relating to bulk sales.

SIXTH: Seller shall sell, assign and transfer to Buyer and the latter agrees to purchase and accept, as of the Closing Date, all of Seller's right, title and interest in and to all trade accounts receivable on the books of Seller arising out of Seller's Branch Operations, at book value less a reasonable discount or reserve for losses or contingencies as determined by agreement of the parties on or before the Closing Date.

In connection with the sale and assignment of such accounts receivable, Seller represents that as of the Closing Date (a) it will have complete ownership of said items, (b) its books, records, accounts and documents recording said accounts and evidencing the transactions giving rise thereto will be correct and complete, (c) to its knowledge, no dispute, setoffs, counterclaims or contingencies will exist as to such items, except as disclosed in writing by Seller, and (d) adequate remedy will exist for the collection of said items and the enforcement of the rights of Seller with respect thereto.

SEVENTH: Seller shall sell, assign and transfer to Buyer as of the Closing Date all the right, title and interest of Seller in and to Sublet Repairs and Work-in-Process at Seller's Branch Operations. Seller shall bill Buyer, and Buyer agrees to pay Seller, for all such Sublet Repairs and Work-in-Process the full retail price for such Sublet Repairs and Work-in-Process to the extent completed, less ten percent (10%).

EIGHTH: Prior to the Closing Date, Seller shall provide Buyer with a list of all unfilled retail orders for Cadillac cars accepted by Seller, showing the customer's name and address, the date of the order, the model and make ordered, and the amount deposited with or credited to the order, and shall assign to Buyer all unfilled retail orders described on such list.

On the Closing Date Seller shall pay to Buyer an amount representing the total of the amounts deposited with Seller for or credited to the listed retail orders, and Buyer shall thereupon undertake Seller's obligations under such orders, upon the terms and conditions specified therein.

Upon delivery of any car covered by any such retail order, Buyer agrees to pay the salesman's commission arising out of the negotiation and acceptance of each such retail order by Seller to the salesman of Seller, whether or not employed after the Closing Date by Buyer, who negotiated such retail order for Seller, such commission to be in an amount determined by Seller's agreement with such salesman at the time the retail order was negotiated. Seller shall provide Buyer with appropriate documentation identifying Seller's liability to each such salesman in connection with the negotiation of each such retail order. Buyer will indemnify Seller against liability for any such salesmen's commissions becoming due and payable under such circumstances.

NINTH: Buyer agrees to assume and discharge all liabilities with respect to warranties on new cars and to assume responsibility for making policy adjustments on new cars delivered by Seller on or prior to the Closing Date in connection with Seller's Branch Operations.

TENTH: Seller represents that on the Closing Date, Seller will:

(a) Be the owner of all the property and rights to be sold, assigned or transferred under this Agreement free from any liens and encumbrances;

(b) Execute and deliver instruments satisfactory to Buyer conveying to Buyer all Seller's right, title and interest to the property and rights required to be sold or assigned under this Agreement;

(c) Execute and deliver to Buyer all such other instruments as may be required by the provisions of this Agreement in form satisfactory to Buyer;

(d) Terminate as of the Closing Date all utility agreements, insurance other than building insurance, service contracts, memberships, subscriptions, etc., executed or acquired by Seller in connection with Seller's Branch Operations; and

(e) Discharge all Seller's obligations and liabilities to employees employed by Seller at Seller's Branch Operations for vacations, vacation pay, and pay in lieu of vacation accruing through the periods of employment expiring on the Closing Date.

ELEVENTH: The date, time and place for closing of the transactions contemplated by this Agreement shall be June 1, 1965, at 2 o'clock P.M. (Pacific Daylight Saving Time) at Los Angeles, California, or such other date, time or place as shall be agreed upon at any time in writing by Buyer and Seller. At the closing:

(a) Each party shall deliver to the other all of the documents herein stipulated to be delivered by each respective party and such other documents as may be reasonably requested by each party in accordance with

the terms hereof, or as may be reasonably necessary to effectuate the intent and purposes of this Agreement; and

(b) Buyer will pay Seller or Seller will pay to Buyer, as the case may be, the aggregate of the net amount payable under this Agreement after deducting credits, offsets, and amounts payable by one party to the other under this Agreement.

TWELFTH: As of the Closing Date, Seller will deliver to Buyer possession of the property to be sold, assigned or transferred under this Agreement. Buyer will operate for Buyer's own account as an authorized Cadillac dealer for the retail sales and service of Cadillac motor vehicles at the premises now occupied by Seller for Seller's Branch Operations commencing on the Closing Date notwithstanding the fact that final adjustments under this Agreement may not be completed until a later date. Buyer will indemnify and hold Seller free and harmless from any loss or liability arising out of or in connection with any operations of Buyer at such location.

THIRTEENTH: Buyer may, at his option, assign and delegate all of Buyer's rights and obligations under this Agreement prior to the Closing Date to any partnership consisting of Buyer and other parties approved by Seller, or to any corporation, twenty-five percent (25%) or more of the capital stock ownership of which is held by Buyer as an individual and the remaining stockholders of which have been approved by Seller. However, this Agreement shall not be otherwise transferred or assigned by Buyer, except, however, that it may be assigned in the event of the death of Buyer prior to the Closing Date, but only to an assignee approved by Seller.

FOURTEENTH: This Agreement, and each of the rights and obligations of the parties under this Agreement, including the obligation of Seller to execute a Cadillac Direct Dealer Selling Agreement with Buyer, or any assignee of this Agreement, are hereby expressly declared to be contingent upon Buyer or any such assignee being in a position as of the Closing Date to meet (a) all of the operating requirements of a Cadillac Direct Dealer Selling Agreement for the dealer point at which it is contemplated that Buyer or such assignee will conduct authorized Cadillac dealership operations under such Selling Agreement, and (b) any other reasonable requirements normally imposed by Seller for the conduct by an authorized Cadillac dealer of Cadillac dealership operations.

IN WITNESS WHEREOF, Buyer has executed this Agreement and Seller has caused this Agreement to be executed by its duly authorized representative as of the day first above written.

WITNESSED BY:

[Illegible]

[Illegible]

WITNESSED BY:

[Illegible]

[Illegible]

GENERAL MOTORS
CORPORATION

(Cadillac Motor Car Division) Seller

/s/ By F. T. HOPKINS

F. T. Hopkins, Attorney-in-Fact

/s/ By LOUIS W. EHLERS

Louis W. Ehlers, Buyer

EXHIBIT A

This Sublease, dated, 1965, between General Motors Corporation, a Delaware Corporation (Cadillac Motor Car Division), with its principal office at 3044 West Grand Boulevard, Detroit, Michigan 48202, hereinafter called the Lessor, and hereinafter called the Lessee,

Witnesseth:

Lessor hereby lets to Lessee and Lessee hires from Lessor the following described premises: Buildings and improvements located on lands in the City and County of Los Angeles, State of California, described as follows:

PARCEL I: Lots 281 and 282 of Tract 5049 in the County of Los Angeles, California, as per Map recorded in Book 54, Page 52 of Maps, Records of Los Angeles County, California;

PARCEL II: Lot 283 of Tract 5049 in the County of Los Angeles, California, as per Map recorded in Book 54, Page 52 of Maps, Records of Los Angeles County, California;

PARCEL III: Lot 280 of Tract 5049 in the County of Los Angeles, California, as per Map recorded in Book 54, Page 52 of Maps, Records of Los Angeles County, California, to be used only for the sale, service and repair of Cadillac automobiles and other products of General Motors Corporation for the term commencing June 1, 1965 and expiring October 6, 1975, at the yearly rent of expiring October 6, 1975.

PROVIDED ALWAYS, and Lessee hereby covenants as follows:

FIRST: To pay the rent as aforesaid to Argonaut Realty Division of General Motors Corporation.

SECOND: At Lessee's expense to keep the premises in good repair, ordinary wear and tear, repairs to the roof, exterior of the building and structural repairs excepted, unless such repairs are made necessary by the act or negligence of the Lessee and at the expiration of the term to remove its goods and effects and peaceably yield up the premises to the Lessor in as good condition as when delivered to Lessee, ordinary wear and tear, damage by fire, the elements, act of the public enemy or casualty excepted; all notices to quit or vacate being hereby expressly waived, any law, usage or custom to the contrary notwithstanding.

THIRD: To comply promptly with all laws, ordinances, requirements and regulations of the Federal, State, County, Municipal and other authorities, the fire insurance underwriters, and any insurance organizations or associations; except that Lessee shall not be required to make any alterations to the exterior of the building, or alterations of a structural nature.

FOURTH: To use the premises exclusively for the purpose set forth herein and during the last three months of this lease, or any extension thereof, to permit the Lessor to display the usual "To Let" signs and to show the premises to prospective tenants. Lessee further agrees that at any time during the term Lessor, Lessor's landlord, or their agents, may enter the premises for the purpose of examining the condition thereof, or to make repairs in any part of the building, but in making such reservation, Lessor does not assume

any liability for the care or supervision of the premises or appurtenances.

FIFTH: That Lessee will not make or permit to be made any alterations or additions to said premises, nor assign, mortgage or pledge this lease, nor sublet the whole or any part of the premises without Lessor's written consent. Consent by Lessor shall apply solely to the particular transaction consented to and shall not constitute a waiver by Lessor of the provisions of this lease.

SIXTH: Lessee will not leave the premises unoccupied during the term, nor by any act of commission or omission cause an increase in the rate of insurance or the cancellation of any insurance policy. In the event of any increase in the rate of insurance caused by Lessee's occupancy, Lessee agrees to pay on demand the amount of any such increase, and in default of such payment, such amount may be added to the next installment of rent as additional rent. That Lessee shall furnish the Lessor with policies of public liability insurance, issued by companies and in amounts satisfactory to Lessor.

SEVENTH: Lessee shall not install any awnings, advertisements or signs on any part of the premises without Lessor's written consent and will keep the sidewalks free from ice, snow and all obstructions.

EIGHTH: Lessee will make its own arrangements for the supply of gas, electricity, water, fuel and the like and will pay for all such services.

It Is Mutually Covenanted and Agreed:

NINTH: Lessor shall not be responsible for any defect or change of condition in said premises, nor for

any damage thereto, nor to any person, nor to goods or things contained therein due to any cause whatsoever except the act or negligence of the Lessor, and Lessee will indemnify Lessor from any claims, demands, and actions arising in connection with Lessee's use of the property, or the use by any person occupying said premises during the term hereof, or by reason of any breach or non-performance of any covenant herein, or the violation of any law or regulation by Lessee.

TENTH: If the premises shall be so damaged by fire, other casualty or act of the public enemy so as to be substantially destroyed, then this lease shall terminate and any unearned rent paid in advance by Lessee shall be apportioned and refunded to it, but in case the premises are not substantially destroyed, Lessor will endeavor to have its Lessor restore the premises and a just proportion of the rent shall abate according to the extent to which premises have been rendered untenable until premises have been restored. The Lessee agrees to give the Lessor immediate notice of any damage to the premises.

ELEVENTH: In case Lessee fails to perform or observe any of the covenants contained herein on its part to be observed and performed for ten (10) days after notice by Lessor, (a) Lessor may forthwith terminate or cancel this lease by notifying Lessee as hereinafter provided, and upon such termination or cancellation Lessee shall be liable to Lessor for all damages Lessor sustains by reason of Lessee's breach of covenant and of such termination or cancellation, or (b) Lessor may forthwith re-enter the premises without notice and upon re-entry may let the premises or any part thereof as agent for Lessee and receive the rent therefor, apply-

ing the same first to the payment of such expense as Lessor may be put to in entering and letting the premises and then to the payment of the rent and the fulfilment of Lessee's covenants hereunder; and Lessee agrees to pay and shall be liable for amounts equal to the several installments of rent as they would, under the terms of this lease, become due if no default had occurred, whether the demised premises be re-let or remain vacant in whole or in part or for a period less than the remainder of the term, or for the whole thereof, but Lessee shall be entitled to be credited at the end of each month with any net amounts actually received by Lessor during such months for the use or occupancy of the demised premises or any part thereof, provided, however, that all sums paid and liabilities incurred by Lessor for any of the purposes aforesaid (which Lessee also agrees to pay and shall be liable for) shall have been first paid in full to Lessor, either directly by Lessee or out of moneys actually received for renting said demised premises after Lessor shall have received undisputed possession thereof, and the maintenance of any action or proceeding to recover possession of the premises or any installment or installments of rent or any other moneys that may be due or become due from Lessee to Lessor shall not preclude Lessor from thereafter instituting and maintaining subsequent actions or proceedings for the recovery of possession of the premises or of any subsequent payment or payments of rent or any other moneys that may be due or become due from Lessee or Lessor. A waiver by Lessor of any breach or breaches by Lessee of any one or more of the covenants or conditions hereof shall not bar forfeiture or any other rights or remedies of Lessor for

any subsequent breach of any such or other covenants and conditions.

TWELFTH: If Lessor shall make any expenditure for which Lessee is responsible, or if Lessee shall fail to make any payment which Lessee is obliged to make hereunder, then the amount thereof may at Lessor's option be added to any installment of rent then due or thereafter becoming due.

THIRTEENTH: In the event the premises or any part thereof are taken or condemned for a temporary or permanent public or quasi-public use, Lessor may at its option terminate this lease and in such event any unearned rent paid in advance shall be returned to Lessee.

FOURTEENTH: If any authority having jurisdiction shall decide that the building or buildings should be demolished and removed, then forthwith upon such decision being made, the Lessee shall vacate the premises and this lease shall cease and come to an end and any unearned rent paid in advance by Lessee shall be apportioned and refunded to it.

FIFTEENTH: That all notices to be given hereunder by either party shall be in writing and given by personal delivery to the Lessee or to one of the executive officers of the Lessor or shall be sent by registered mail addressed to the party intended to be notified at the post office address of such party last known to the party giving such notice and notice given as aforesaid shall be a sufficient service thereof. Provided, however, that it is mutually agreed that the Lessor appoints the Manager and the Assistant Secretaries of Argonaut Realty Division of General Motors Corporation, Argonaut Building, Detroit, Michigan, as its agents and that any one of them may give

all notices and receive all notices to be given hereunder, and may receive the rent, and notices shall be sent to any one of said agents and not otherwise. The right is hereby reserved by the Lessor to countermand such appointments and make others consistent herewith, due notice of which shall be given by the Lessor to the Lessee.

SIXTEENTH: If at any time proceedings in bankruptcy, or pursuant to any other act for the relief of debtors, shall be instituted by or against Lessee, or if Lessee shall compound Lessee's debts or assign over Lessee's estate or effects for payment thereof, or if any execution shall issue against Lessee or any of Lessee's effects whatsoever, or if a receiver or trustee shall be appointed of Lessee's property, or if this lease shall by operation of law, devolve upon or pass to any person or persons other than Lessee personally, then and in each of said cases, Lessor may terminate this lease forthwith by notifying Lessee as herein provided. Upon such termination all sums due and payable or to become due and payable by Lessee shall at once become due and payable.

SEVENTEENTH: This is a sublease and the Lessor's interest in the premises is as Lessee under an underlying lease made by CONTINENTAL ASSURANCE COMPANY (Successor in interest to George W. Carter Company), dated May 12, 1954, a copy of which, initialed for identification, is attached hereto. This sublease is expressly made subject to all the terms and conditions of said underlying lease and the Lessee agrees to use the premises in accordance with the terms of said underlying lease and not do or omit to do anything which will breach any of the terms thereof. If said underlying lease is terminated, this sublease shall

terminate simultaneously and any unearned rent paid in advance shall be refunded to the Lessee.

EIGHTEENTH: Lessor hereby covenants that Lessee upon paying the rent as herein reserved and performing all the covenants and agreements herein contained on the part of the Lessee may quietly enjoy the premises, except as herein otherwise provided, and subject, however, to the terms of the lease to Lessor, and to the terms of any mortgages which may now or hereafter affect the premises.

NINETEENTH: In the event that Lessee's Cadillac Dealer Selling Agreement is terminated or in the event that the premises are used for purposes other than the sale or servicing of General Motors Corporation's products, then the Lessor shall cancel this Sublease by giving Lessee at least five (5) days' prior written notice.

TWENTIETH: The Lessor and the Lessee waive all rights, each against the other, for damages caused by fire or other perils covered by insurance where such damages are sustained in connection with the occupancy of the leased premises.

The covenants and agreements contained herein are binding upon the parties hereto and their respective successors, legal representatives and assigns.

WITNESS the signatures and seals of the above parties.

GENERAL MOTORS
CORPORATION
(Cadillac Motor Car Division)
By
Vice President
ATTEST
Assistant Secretary

CONSENT

CONTINENTAL ASSURANCE COMPANY

(Successor in interest to George W. Carter Company), the Lessor under the underlying Lease dated May 12, 1954, as amended, and referred to in the within Sublease dated _____ hereby consents to the making of the within Sublease with the express understanding that such consent shall not operate to release General Motors Corporation from any of the Lessee's covenants in the underlying Lease.

DATED _____

CONTINENTAL ASSURANCE
COMPANY

By _____
Vice President

ATTEST _____
Assistant Secretary

Admitted in Evidence 2-23-66.

GENERAL COUNSEL'S EXHIBIT No. 3-B.
BILL OF SALE

KNOW that GENERAL MOTORS CORPORATION (Cadillac Motor Car Division), a Delaware corporation, pursuant to and subject to Agreement dated May 12, 1965, between General Motors Corporation (Cadillac Motor Car Division), as Seller, and Louis W. Ehlers, as Buyer, which Agreement was assigned by Louis W. Ehlers to Lou Ehlers Cadillac, a California corporation, and in consideration of the sum of _____ to it in hand paid by Lou Ehlers Cadillac,

the receipt whereof is hereby acknowledged, except for the amount specified on Schedule C hereto which amount will be paid to General Motors Corporation (Cadillac Motor Car Division) by Lou Ehlers Cadillac's financing institution, has bargained, sold, delivered and set over, and by these presents does bargain, sell, deliver and set over to Lou Ehlers Cadillac all the property described in the annexed schedules, and located at 5151 Wilshire Boulevard, Los Angeles, California, to have and to hold the same forever.

The said property is described in the following schedules which are incorporated herein and made a part hereof, to wit:

Schedule A—Fixed Assets.

Schedule B—Company Cars and Used Cars.

Schedule C—New Cadillac Motor Vehicles and Chassis.

Schedule D—Cadillac Repair Parts.

Schedule E—Cadillac Accessories.

Schedule F—Cadillac Repair Parts and Accessories Not Included in D and E.

Schedule G—Special Tools.

Schedule H—Gasoline, Oil, and Grease, New Tires and Tubes.

Schedule I—Paint Material.

Schedule J—Undercoating.

Schedule K—Miscellaneous Items.

The said General Motors Corporation (Cadillac Motor Car Division) does hereby, for itself, its successors and assigns, covenant with the said Lou Ehlers Cadillac, its successors and assigns, that General Motors Corporation (Cadillac Motor Car Division) is the owner of

and has good and complete title to said property, free and clear from all charges, liens and encumbrances whatsoever, and has good right to sell the same; and that General Motors Corporation (Cadillac Motor Car Division) will, upon request of Lou Ehlers Cadillac from time to time execute and deliver such further instruments as may by Lou Ehlers Cadillac be reasonably deemed proper or necessary for the more effectual vesting in Lou Ehlers Cadillac of the title hereby intended to be transferred.

IN WITNESS WHEREOF, General Motors Corporation (Cadillac Motor Car Division) has caused these presents to be executed by its duly authorized representative effective as of the 1st day of June, 1965.

WITNESSED BY:

[ILLEGIBLE]

GENERAL MOTORS
CORPORATION

(Cadillac Motor Car Division)

By /s/ F. T. HOPKINS

Attorney-in-Fact

State of California, County of Los Angeles—ss.

On this 7 day of June, 1965, before me personally appeared F. T. Hopkins, to me known, who being by me duly sworn, did depose and say that he is the Attorney-in-Fact of General Motors Corporation (Cadillac Motor Car Division), the corporation described in and who executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said cor-

poration; and that he signed his name thereto by like order.

[ILLEGIBLE]

Notary Public in and for said county and state

My Commission Expires: -----

Summary of Schedules for Bill of Sale Effective as of
June 1, 1965, Executed by General Motors Corporation (Cadillac Motor Car Division) to Lou Ehlers Cadillac

<u>Schedule</u>	<u>Amount</u>
Schedule A—Fixed Assets	
Schedule B—Company Cars and Used Cars	
Schedule C—New Cadillac Motor Vehicles and Chassis	
Schedule D—Cadillac Repair Parts	
Schedule E—Cadillac Accessories	
Schedule F—Cadillac Repair Parts and Accessories Not Included in D and E	
Schedule G—Special Tools	
Schedule H—Gasoline, Oil and Grease, New Tires and Tubes	
Schedule I—Paint Material	
Schedule J—Undercoating	
Schedule K—Miscellaneous Items	

TOTAL

Sales Tax at 4% on Schedules A, G and K

GRAND TOTAL

Q. R. Initials for Seller

[Illegible] Initials for Buyer

Admitted in Evidence, 2-23-66.

GENERAL COUNSEL'S EXHIBIT No. 3-C.

ASSIGNMENT

KNOW that GENERAL MOTORS CORPORATION (Cadillac Motor Car Division), a Delaware corporation, pursuant to and subject to Agreement dated May 12, 1965 between General Motors Corporation (Cadillac Motor Car Division), as Seller, and Louis W. Ehlers, as Buyer, which Agreement was assigned by Louis W. Ehlers to Lou Ehlers Cadillac, a California corporation, and in consideration of the sum of to it in hand paid by Lou Ehlers Cadillac, the receipt whereof is hereby acknowledged, and in consideration of the undertaking by Lou Ehlers Cadillac of the obligations hereinafter set forth, on its part to be performed, has assigned, bargained, sold, delivered and set over and by these presents does assign, bargain, sell, deliver and set over to Lou Ehlers Cadillac all the right, title and interest of General Motors Corporation (Cadillac Motor Car Division) in and to the property, contracts, claims, orders and other interests described in the annexed schedules and arising out of the Cadillac retail sales and service operations conducted by General Motors Corporation (Cadillac Motor Car Division) at 5151 Wilshire Boulevard, Los Angeles, California, to have and to hold the same forever.

The said assets and rights are described in the following schedules which are incorporated herein and made a part hereof, to wit:

Schedule A—Accounts Receivable.

Schedule B—Unfilled Retail New Car Orders With
Customers' Cash Deposits Thereon.

Schedule C—Sublet Repairs and Work-in-Process.

Schedule D—Prepaid Taxes.

The said General Motors Corporation (Cadillac Motor Car Division) does hereby constitute and appoint Lou Ehlers Cadillac with power of substitution to be its attorney, irrevocable in the premises, to do and perform all acts, matters and things touching the premises, in like manner to all intents and purposes as it could do if personally present.

The said General Motors Corporation (Cadillac Motor Car Division) does hereby for itself, its successors and assigns, covenant with the said Lou Ehlers Cadillac, its successors and assigns, that the said several debts and obligations set out in the annexed schedules are still due and owing to it from the several debtors and obligors set out therein, respectively, and that the customers' deposits herewith assigned constitute the full unearned amount of the deposits received from such customers by General Motors Corporation (Cadillac Motor Car Division); and that it has good right to sell and assign all of said properties, claims and interests unto the said Lou Ehlers Cadillac in the manner aforesaid; and that it, the said General Motors Corporation (Cadillac Motor Car Division), its successors or assigns, will not at any time hereinafter, receive the said debts or some or any part thereof, nor revoke the power of attorney hereinbefore given, or do any act whereby the said Lou Ehlers Cadillac, its successors or assigns, may be prevented or hindered from enforcing any of the assigned obligations or payments of any of the assigned debts and that it will, upon the request of Lou Ehlers Cadillac, from time to time, execute and deliver such further instruments as may by said Lou Ehlers Cadillac be reasonably deemed proper or necessary for the more

effective vesting in Lou Ehlers Cadillac of the interests intended to be assigned.

The said Lou Ehlers Cadillac assumes all the obligations of General Motors Corporation (Cadillac Motor Car Division) under all the contracts and arrangements set forth in the annexed schedules in accordance with the terms of the sample contracts and forms to such schedules annexed and in accordance with the aforesaid Agreement dated May 12, 1965, and undertakes and agrees fully to perform and discharge all obligations and liabilities set forth therein and to indemnify General Motors Corporation (Cadillac Motor Car Division) with respect thereto.

IN WITNESS WHEREOF, General Motors Corporation (Cadillac Motor Car Division) has caused these presents to be executed by its duly authorized representative effective as of the first day of June, 1965, and Lou Ehlers Cadillac has caused these presents to be executed by its duly authorized officer effective as of the first day of June, 1965.

Witnessed by:

[Illegible]

Witnessed by:

Illegible]

GENERAL MOTORS CORPORATION

(Cadillac Motor Car Division)

/s/ By F. T. HOPKINS

Attorney-in-Fact

LOU EHLERS CADILLAC

/s/ By [Illegible]

Title

State of California, County of Los Angeles—ss.

On this 7 day of June, 1965, before me personally appeared F. T. Hopkins, to me known, who, being by me duly sworn, did depose and say that he is the Attorney-in-Fact of General Motors Corporation (Cadillac Motor Car Division), the corporation described in and who executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

[Illegible]

Notary Public in and for said county and state

My Commission Expires:

State of California, County of Los Angeles—ss.

On this 7 day of June, 1965, before me personally appeared Louis W. Ehlers, to me known, who being by me duly sworn, did depose and say that he is the President of Lou Ehlers Cadillac, a California corporation, the corporation described in and who executed the above instrument; that he knows the seal of said corporation; the the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; that he signed his name thereto by like order.

[Illegible]

Notary Public in and for said county and state

My Commission Expires:

Summary of Schedules for Assignment Effective as of June 1, 1965, by General Motors Corporation (Cadillac Motor Car Division) to Lou Ehlers Cadillac

<u>Schedule</u>	<u>Amount</u>
Schedule A—Accounts Receivable	
Schedule C—Sublet Repairs and Work-in-Process	
Schedule D—Prepaid Taxes	

Total

Less

Schedule B—Unfilled Retail New Car Orders With Customers' Cash Deposits Thereon

NET TOTAL

[Illegible] Initials for Seller

[Illegible] Initials for Buyer

Schedule A to Assignment Effective as of June 1, 1965, Executed between General Motors Corporation (Cadillac Motor Car Division) and Lou Ehlers Cadillac

Schedule A

Accounts Receivable

Total Amount

Detailed Schedule has been initialed by and delivered to both parties.

[Illegible] Seller's Initials

[Illegible] Buyer's Initials

Schedule B to Assignment Effective as of June 1, 1965, Executed Between General Motors Corporation (Cadillac Motor Car Division) and Lou Ehlers Cadillac

Schedule B

Unfilled Retail New Car Orders With
Customers' Cash Deposits Thereon

<u>Date</u>	<u>Name</u>	<u>Amount</u>
May 3, 1965	Dolores Miranda Abesilla	
April 28, 1965	Ames Furniture Co.	
May 11, 1965	Kurtis Adler	
April 3, 1965	Gayl Delacroix	
May 20, 1965	Glenn or May Dunn	
May 11, 1965	Vic or Leonie Duplessis	
May 26, 1965	Clifford R. Gross	
April 27, 1965	Ben Paul Harper	
May 3, 1965	Lucille Lambert	
May 7, 1965	Leasing Enterprises Inc.	
May 19, 1965	Dr. Philip W. or Betty Leemon	
April 20, 1965	Charles Lind	
March 12, 1965	Harry M. Lukens	
May 26, 1965	John Robert Manken	
May 17, 1965	Virginia B. Milnor	
May 7, 1965	Robert Petrie	
April 23, 1965	Riviera Sofa Bed of Inglewood	
April 23, 1965	Riviera Sofa Bed of Inglewood	
May 1, 1965	Herbert Royston	
May 11, 1965	Charles R. Southcott	
May 22, 1965	Louis A. or Irene L. Wempe	
May 17, 1965	Noel F. Wiley or Mildred Dole	
	Total	

In consideration of the payment by General Motors Corporation (Cadillac Motor Car Division) to Lou Ehlers Cadillac, being the amounts deposited with General Motors Corporation (Cadillac Motor Car Division) for or credited to the above-listed new car orders placed with General Motors Corporation (Cadillac Motor Car Division), Lou Ehlers Cadillac herewith undertakes General Motors Corporation (Cadillac Motor Car Division) obligations under the above-listed new car orders upon the terms and conditions specified in the sample form of order attached hereto, initialed by the parties and made a part hereof.

[Illegible] Initials for Seller

[Illegible] Initials for Buyer

Additional Terms and Conditions

1. As used in this Order the terms (a) "Purchaser" shall mean the party executing this Order as such on the face hereof, and (b) "Seller" shall mean Cadillac Motor Car Division—General Motors Corporation.

2. Seller reserves the right to change the price of new Cadillac motor vehicles without notice. In the event the price of the new motor vehicles ordered hereunder is increased prior to delivery of the new motor vehicles ordered hereunder to Purchaser, Purchaser may, if dissatisfied therewith, cancel this Order, in which event if a used motor vehicle has been traded in as a part of the consideration for such new motor vehicle, such used motor vehicle shall be returned to Purchaser upon payment of a reasonable charge for storage and repairs (if any), or, if such used motor vehicle has been previously sold by Seller, the amount received

therefor, less a selling commission of 15% and any expenses incurred in storing, insuring, conditioning or advertising said used motor vehicle for sale, shall be returned to Purchaser.

3. If the used motor vehicle which has been traded in as a part of the consideration for the motor vehicle ordered hereunder is not to be delivered to Seller until delivery to Purchaser of such motor vehicle, the used motor vehicle shall be reappraised at that time and such reappraised value shall determine the allowance made for such used motor vehicle. If such reappraised value is lower than the original allowance therefor shown on the front of this Order, Purchaser may, if dissatisfied therewith, cancel this Order, provided, however, that such right to cancel is exercised prior to the delivery of the motor vehicle ordered hereunder to the Purchaser and surrender of the used motor vehicle to Seller.

4. Purchaser agrees to deliver to Seller satisfactory evidence of title to any used motor vehicle traded in as a part of the consideration for the motor vehicle ordered hereunder at the time of delivery of such used motor vehicle to Seller. Purchaser warrants any such used motor vehicle to be his property free and clear of all liens and encumbrances except as otherwise noted herein.

5. Unless this Order shall have been cancelled by Purchaser under and in accordance with the provisions of paragraph 2 or 3 above, Seller shall have the right,

upon failure or refusal of Purchaser to accept delivery of the motor vehicle ordered hereunder and to comply with the terms of this Order, to retain as liquidated damages any cash deposit made by Purchaser, and, in the event a used motor vehicle has been traded in as a part of the consideration for the motor vehicle ordered hereunder, to sell such used motor vehicle and reimburse himself out of the proceeds of such sale for the expenses specified in paragraph 2 above and for such other expenses and losses as Seller may incur or suffer as a result of such failure or refusal by Purchaser.

6. Seller reserves the right to change the design of any new Cadillac motor vehicle, chassis, accessories or parts thereof at any time without notice and without obligation to make the same or any similar change upon any motor vehicle, chassis, accessories or parts thereof covered by this Order either before or subsequent to delivery thereof to Purchaser.

7. Seller shall not be liable for failure to deliver or delay in delivering the motor vehicle covered by this Order where such failure or delay is due, in whole or in part, to any cause beyond the control or without the fault or negligence of Seller.

8. The price for the motor vehicle specified on the face of this Order includes reimbursement for Federal Excise taxes, but does not include sales taxes, use taxes or occupational taxes based on sales volume (Federal, State or Local) unless expressly so stated. Purchaser assumes and agrees to pay, unless prohibited by

law, any such sales, use or occupational taxes imposed on or applicable to the transaction covered by this Order, regardless of which party may have primary tax liability therefor.

9. There are no warranties, expressed or implied, made by the Seller, as the Manufacturer, on new Cadillac motor vehicles, chassis or parts furnished under this Order except the Manufacturer's Warranty against defects in material and workmanship set out below :

"Cadillac Division of General Motors Corporation, as Manufacturer, warrants each new motor vehicle and chassis including all equipment and accessories thereon (except tires and tubes), manufactured or or supplied by Cadillac Division and delivered to the original retail purchaser by an authorized Cadillac Dealer, to be free from defects in material and workmanship under normal use and service; Cadillac Division's obligation under this warranty being limited to repairing or replacing at its option any part or parts thereof which shall, within twenty-four (24) months after delivery of such vehicle or chassis to the original retail purchaser or before such vehicle or chassis has been driven twenty-four thousand (24,000) miles, whichever event shall first occur, be returned to an authorized Cadillac Dealer at such Dealer's place of business and which examination shall disclose to Manufacturer's satisfaction to have been thus defective. The repair or replacement of defective parts under this warranty will be made by such Dealer without charge for parts, and if made at such Dealer's place of business, without charge for labor.

The provisions of this warranty shall not apply to any Cadillac motor vehicle or chassis which has been

subject to misuse, negligence or accident, or which shall have been repaired or altered outside of an authorized Cadillac dealership in any way so as, in the judgment of Manufacturer, to affect adversely its performance and reliability, nor to normal maintenance services (such as engine tune up, fuel system cleaning and wheel, brake and clutch adjustments) and the replacement of service items (such as spark plugs, ignition points, filters and brake and clutch lining) made in connection with such services, nor to normal deterioration of soft trim and appearance items due to wear and exposure.

This warranty is expressly in lieu of any warranties, expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose, and of any other obligations or liability on the part of the Manufacturer, and Cadillac Division neither assumes nor authorizes any other person to assume for it any other liability in connection with such motor vehicle or chassis"

10. Any used motor vehicle sold to Purchaser by Seller under this Order is sold at the time of delivery by Seller without any guarantee or warranty, expressed or implied, as to its condition or the condition of any part thereof except as may be otherwise specifically provided in writing on the face of this Order or in a separate writing furnished to Purchaser by Seller.

11. The Purchaser, before or at the time of delivery of the motor vehicle covered by this Order will execute such other forms of agreement or documents as may be required by the terms and conditions of payment indicated on the front of this Order.

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Schedule C to Assignment Effective as of June 1, 1965, Executed Between General Motors Corporation (Cadillac Motor Car Division) and Lou Ehlers Cadillac

Schedule C

Sublet Repairs and Work-in-Process

<u>Customer Name</u>	<u>Repair Order No.</u>	<u>Amount</u>
Cadillac Motor Car Division Freight Claim (New Car)	W32297	\$ -0-
Cadillac Motor Car Division Freight Claim (New Car)	W32421	-0-
Cadillac Motor Car Division Freight Claim (New Car)	W32422	-0-
Cadillac Motor Car Division Freight Claim (New Car)	W32423	
Cadillac Motor Car Division Freight Claim (New Car)	W32425	
Dr. Meyer Moss	W41475	
Dr. Meyer Moss	W41976	
D. Peques	W42351	
Carey Cadillac	W42357	
Bonwood Furniture	W42371	
Ascho Electronics	W42951	
Ascho Electronics	W42952	
Accoustica Assoc. Inc.	W42955	
L. L. Cogon	W42958	
D. Dickson	W42959	
Monolitz Portland Cement	W43046	
	Total	

[Illegible] Initials for Seller

[Illegible] Initials for Buyer

Schedule D to Assignment Effective as of June 1,
1965, Executed Between General Motors Corpora-
tion (Cadillac Motor Car Division) and Lou
Ehlers Cadillac

Schedule D

Prepaid Taxes

Los Angeles County Personal Property
('64-'65) Month of June, 1965

Amount

Los Angeles County Real Property Taxes
Month of June, 1965

Amount

Total

[Illegible] Initials for Seller

[Illegible] Initials for Buyer

GENERAL COUNSEL'S EXHIBIT No. 3-D.
LOU EHLERS CADILLAC

Shop Employees, June, 1965

- # Arne Andersen, New Car Get Ready
Harvey H. Avant, Jr., Polisher
- # Gordon L. Baird, Tune-Up
Clifford R. Callaway, Metal-Main Trainee
- # William H. Callaway, Metal-Man
Bruce W. Corey, Painter
William T. Craft, Brakes
James J. Danzilio, Hydramatic
Wayne A. Dooley, Maintenance
Gregory Ehlers, Car Attendant

Bernard V. Ehrig, Air Conditioning

Edward L. Flores, Metal-Man

Grant B. Geyer, Car Attendant

Ology Gibson, Polisher & Underseal

Arvid S. Greenberg, Heavy Duty Mechanic

Edward P. Hansen, Hydramatic

Frederick I. Harms, Lubricator

Walter Heiman, Lubricator

Domenico Marchione, Heavy Duty Mechanic

James B. Martin, Heavy Duty Mechanic

John J. McMurty, Painter

Donald Nelson, Brake and Front-end

Robert G. Peterson, Rattle Body Service

Louis L. Ramos, Painter

Wayne L. Rose, Tune-Up Mechanic

Howard W. Sims, Lubricator

Edward J. Steiner, Metal-Man

Tadeusz A. Strojek, New Car Get Ready

Michael D. Sullivan, Heavy Duty Mechanic

George S. Tancrajter, Heavy Duty Mechanic

Edward Tinker, New Car Get Ready

Harry J. Tucker, Jr., Metal-Man

Roosevelt Winters, Maintenance

Susie A. Winters, Maintenance

Leon Woodard, Car Wash

Employed by Cadillac Motor Car Division, General Motors Corp. at Wilshire Agency as of May 28, 1965.

Admitted in Evidence 2-23-66.

GENERAL COUNSEL'S EXHIBIT No. 3-E.

Engineers
Mechanics

★ PLANNING

—Machine Parts Planners

★ TOOLING

- Jig & Fixture Builders
- Tool & Cutter Grinders
- Tool & Equipment Repairmen

DOUGLAS

AIRCRAFT GROUP

LONG BEACH

—APPLY—
5101 Faculty Lakewood Center

"PLENTY OF FREE PARKING"
—AND—

TORRANCE

190th &

AUTOMOTIVE MEN

0.000 P.U. ANNUAL
... as potential for right man
... of people. Let's
... force or price with
... your own. Send brief
... to right audience. 1st
BOX 1000, TIMES

AUTO MECHANICS

I am experienced heavy duty diesel me-
chanic day shift, 7:30 am to 4:30 pm. I
love to work on diesels and light inter-
mediate for night shift 4:30 pm to 12
pm. All companies with shift. Apply in
person after 10:30 am. See Mr. Michel.

Don Harrison's

HOLLYWOOD

5700 Hollywood Bl.

Auto mechanic at center for Techni-
cal Center. Excellent pay. Free benefits. A
great opportunity to raise your fam-
ily. Excellent Service. Manager, Tom
W. A. Gray, 1234
Olat.

AUTOMOTIVE MECHANIC
Experienced Diesel & Gasoline
mechanic. 10 yrs. exp. in GM
& Ford. Excellent pay. Free benefits.
Apply in person. 1234
Olat.

AUTOMOTIVE MECHANIC
Experienced Diesel & Gasoline
mechanic. 10 yrs. exp. in GM
& Ford. Excellent pay. Free benefits.
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& Ford. Excellent pay. Free benefits.
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... by subtracting

LOS ANGELES TIME

LOCAL RATES	SUNDAY
Apply to classified advertising placed in 10 Southern California counties	ONE
LOCAL RATE (per line)	2.14
JOBS WANTED	1.14
(per line) each day	

Rates charge outside 10 Southern Califor-
nia counties must submit check or money
order must contain license number, and it

MINIMUM AD: 2

APPLICANTS DESIRING SATI-
AT EITHER LOCATION, FOR
APPLY AT THE TORRANCE.
A.A. TO 3 P.M. APPLY AT
TO 4:00 P.M. MONDAY THRU

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7 Times

☐ Bank Reference

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Declaracion Alfabetic-
 Por identificación 9-10-65 Elites
 de la Comandancia

GENERAL COUNSEL'S EXHIBIT No. 3-F.

BULLETIN A-E 1. September 8, 1965

SUBJECT: Receiving and Handling New Cars

EFFECTIVE DATE: September 8, 1965

TO: New Car Foreman

Sales Manager

Sales Secretary

Upon receipt of a new car from the factory the New Car Foreman will:

1. Inspect all cars minutely for freight damage. Record such damage by serial number both on the dealer's copy and the carrier's copy of the freight bill accompanying the shipment of cars. Obtain driver's signature on both copies of the freight bill and affix his signature to both copies of the freight bill. Submit dealer's copy of the freight bill to the office manager or Sales Secretary.
2. Assign stock number in numerical order.
3. Record stock number, serial number, model, color, trim on white gummed label and affix label to the inside left vent window. Record same information on white key tag. Place all four keys on ring of white key tag. The writing on the gummed label and key tag will be in ink to prevent fading.
4. Give keys to new car to Sales Secretary or to Sales Manager in her absence soon as car is checked in.
5. Give plastic envelope containing warranty book and owner's manual to Office Manager, or Sales Secretary in his absence.

6. Issue separate repair order for each new car received where freight damage exists, recording such damage in absolute detail. New Car Foreman will retain white and hard copy of such repair orders and promptly do the work called for. The pink and yellow copies will be given to Sales Secretary on same day. (We are allowed a maximum of 15 days after receipt of car to file for transportation damage.) There are to be no exceptions to completing transportation damage work within these time limits unless parts are back ordered, in which case, we must support our transportation claims with packing slip numbers and dates which will be recorded on the repair order directly under the entry of the parts items involved.

Writing Internal Repair Orders.

Note: In the event of freight damages, the Sales Secretary or Sales Manager will not issue an internal conditioning order unless New Car Foreman has first submitted the pink and yellow copies of a repair order he has created which details such damages. The Sales Secretary will file these copies by stock number. Upon completion of the work called for on such repair order, the New Car Foreman will submit completed hard copies and originals to the Sales Secretary or Sales Manager. **IMPORTANT:** it is necessary in the event the New Car Foreman does not submit completed copies within 10 days, that Sales Manager take whatever action necessary so that freight claims will be submitted within allotted time.

A. Sold Cars:

The Sales Secretary or Sales Manager will write internal repair order reflecting the following information:

1. Date, stock number, serial number, body number, model, color and trim.
2. New Car Service, complete L.A. Group.
3. Customer's and Salesman's name.
4. Delivery date and hour as advised by New Car Foreman.

There shall also be attached to each such internal reconditioning order:

1. Purchase Order properly signed and stapled to repair order for 20 gallons of gasoline.
2. New Car Delivery Report Form and New Car Conditioning Label, paper clipped to Repair Order.

B. Stock Cars:

1. Write internal repair order reflecting date, stock number, serial number, body number, model, color and trim.
2. New Car Service, Blue Coral, and Underseal.

Attach to each order:

1. Purchase Order properly signed and stapled to repair order for 20 gallons of gasoline.
2. New Car Delivery Report Form and New Car Conditioning Label, paper clipped to repair order.

After the repair order is complete, the pink copy will be removed and housed in either the "sold" or "Stock" file until the yellow copy which signifies work has been completed, is presented to the Sales Secretary by the New Car Foreman. Upon receipt of the yellow copy, it will be housed in the "Sold or "Stock" file until the car has been sold and the corresponding pink copy has been destroyed. When the car is sold, the yellow copy of the internal repair order will be stapled to the back side of the car order form where it will remain for future reference.

Issuance of Internal Repair Orders:

The Sales Secretary will issue internal repair orders to the New Car Foreman each day commensurate with his ability to handle the work. Never will the number of repair orders exceed by two (2), the number of cars that can be completed in a given day.

A.F.A. Work:

If the process of conditioning a new car reveals A.F.A. work, the New Car Foreman shall record the necessary A.F.A. work in absolute detail on the hard copy of the internal conditioning order. NOTE: A.F.A. work is not to be recorded on a repair order covering freight damage.

Subsequent Internal Repair Orders:

All subsequent repair orders will be written by the Sales Secretary or Sales Manager only. Requests from salesmen, customers, etc. will

be ignored. Each stock car will require a subsequent repair order at time of sale to include the balance of the L.A. Group plus any additional accessories or options sold.

Whenever necessary to switch tires from one new car to another, the Sales Secretary or Sales Manager will specify in an internal repair order as follows: Exchange tires between Stock Number and Stock Number

Dealer Trades:

It will be the responsibility of the New Car Foreman to inspect and properly check in each Dealer Trade. Any damages, other than A.F.A. work shall be reported in writing immediately to Sales Manager who will be responsible for recovering necessary costs. The car received from another dealer will display the same stock number as the car we traded, but the letter "T" will follow the number. If we trade our stock number 10, the car received in trade will become stock number 10T. If stock number 10T is traded, the car received will become 10TT, etc.

Completed Cars:

Upon completion of new car conditioning and A.F.A. work the New Car Foreman will:

1. Write the location of the car on copies of the repair order in his possession.
2. Give all completed repair orders and car keys to the Sales Secretary or Sales Manager.

The Sales Secretary and Sales Manager shall be responsible for maintaining all new car keys according to Stock Number in the locked cabinet provided. The keys may be given to salesmen or authorized personnel only upon preparation of a key tag showing the Stock Number, date, and name of employee to whom such keys are issued thereafter. The key tags shall also be kept according to Stock Number in the locked cabinet and shall be removed only when the keys are returned, except for sold cars.

L. W. Ehlers

Admitted in Evidence 2-23-66.

GENERAL COUNSEL'S EXHIBIT No. 3-G.

September 3, 1965

TO ALL EMPLOYEES:

As is apparent, your company is spending considerable money in general renovation of its facilities and a detailed painting and cleaning program.

While the inconveniences have been very unpleasant at times, I know you all agree that the net result will be very worth-while. It's most important of course that a totally cooperative effort be made by each employee if we are to keep our facilities in 1st Class condition. To this end we ask that you:

Please keep all equipment, furniture, and furnishing in your work areas meticulously clean.

Please avoid all bodily contact with painted surfaces both interior and exterior.

Please do not drive nails, paste, or tape anything to walls or other areas.

Please avoid extinguishing cigarettes or flickering ashes on any floor area or on the exterior area of the building.

Please do not otherwise litter the interior or exterior of the building with paper cups, cans, cartons, food, etc. as your company has provided receptacles for this purpose. Do not stand anything on outside ledges of building.

Please do not put your feet on desks or chairs.

In general I do not believe it necessary to elaborate further. If all of us treat company equipment as though it was our own, we will all work in a more clean and pleasant atmosphere than in the past.

Please keep in mind that as a Cadillac dealership our customers have the right to expect total cleanliness and well cared for equipment. The better job we do in this respect unquestionably will mean more business for this dealership and, in the final analysis, this adds up to job security for all of us.

Your signature affixed below will indicate your appreciation of the importance of this and your desire to help us in this program.

/s/ L. W. EHLERS

L. W. Ehlers

P. S. To Office Manager: Please make this a part of each employee's personnel file. Obtain signed copy from all new hires.

EMPLOYEE'S SIGNATURE:

DATE:

Admitted in Evidence 2-23-66.

GENERAL COUNSEL'S EXHIBIT No. 3-H.

To All Employees:

The importance of extreme caution when exiting from any service doors cannot be over emphasized.

All employees are asked to come to a complete stop at all service doors being certain the front bumper of the car is just inside the building—then proceed at the slowest possible speed until you can see clear in all directions.

Remember pedestrians of all ages as well as fast auto traffic, cross our service doors.

Please acknowledge and respect the seriousness of this subject by affixing your signature as provided and return this form to your department manager. It will then become part of your peronnel record.

/s/ L. W. EHLERS
L. W. Ehlers

Attention All Department Managers:

Whenever you hire a new employee, please be certain that he or she signs this form, then submit it along with other necessary documents to A. R. Makinson.

EMPLOYEE'S SIGNATURE:

DATE:

Admitted in Evidence 2-23-66.

GENERAL COUNSEL'S EXHIBIT No. 3-I.

To All Employees:

Many of you have already been provided with an outline of a hospitalization, life insurance, sickness and disability program explaining in a broad way the various coverages available. These employees who have not received this outline will find one attached hereto. The effective date of this program is July 1, 1965.

Because of certain employees past affiliation with G.M., it is necessary to provide several alternatives to this blanket program, e.g.

CLASS I—Covers those employees who have had no previous G.M. affiliation. These employees will be able to avail themselves of our complete program at a cost of \$17.77 per month if they have dependents.

CLASS II—Same as Class I except employee has no dependents. Cost is \$10.00 per month.

CLASS III—Covers former G.M. employees who are subscribing to the Blue Cross-Blue Shield plan for the period of one year. These employees may avail themselves of our complete program excluding medical insurance at a cost of \$7.00 per month. When such employees opportunity to procure Blue Cross-Blue Shield under the G.M. plan is no longer available, then such employees may apply for Class I coverage at a cost of \$17.77 per month if they have dependents.

CLASS IV—Same as Class III except employee has no dependents in which case such employee may apply for Class II coverage at a cost of \$10.00 per month.

CLASS V—Covers former G.M. employees who have lifetime Blue Cross-Blue Shield coverage paid for by G.M. These employees may avail themselves of our

complete program excluding medical insurance at a cost of \$7.00 per month.

As can be appreciated, our combined program for medical, life insurance, disability and sickness costs considerably more than the above figures. Your company will be paying for the difference which amounts to approximately the same amount you will be paying.

This is another step on the part of the company to make this a good place to work and we feel that you will concur that this is valuable coverage for you and your dependents, if any. Many hours have been spent reviewing the various offers of different insurance firms. Your company believes that, cost considered, this is the most beneficial and attractive plan we have seen.

Naturally this represents a sizeable annual expense to your company, and like anything else, the cost of this package program is predicated upon the direct experience that the insurance company will have with all of us as a group especially in the area of medical expenses. We feel it wise to go on a record now that should the cost of this program increase as a result of abuses or otherwise, we will find it necessary to pass along to you any subsequent increases.

As soon as possible our insurance company will supply the necessary enrollment forms. In the meantime you will find an attached form authorizing your company to deduct from your monthly earnings the amount appropriate to the particular classification in which you fall. Please indicate your proper classification in the space provided then sign the form and return it immediately to your supervisor.

LOU EHLERS CADILLAC

Admitted in Evidence 2-23-66.

GENERAL COUNSEL'S EXHIBIT No. 3-J.
LIFE INSURANCE

This plan provides life insurance in the amount of \$10,000.00 for each employee. The amount of life insurance is payable to your beneficiary if death occurs at any time from any cause.

ACCIDENTAL DEATH AND
DISMEMBERMENT

The plan includes Accidental Death and Dismemberment insurance in the amount of \$10,000.00 for each employee. The full amount is paid in addition to the life insurance if death is due to accident. One half of the amount is paid for accidental loss of foot, hand, or eye, and the full amount is paid for loss of any two of these.

COMPREHENSIVE MEDICAL EXPENSE
INSURANCE

For Employees and Dependents

Deductible: \$50.00 per policy year on all charges.

Coinsurance: Hospital charge—80/20% all other charges—80/20%.

Maximum: \$10,000.00 Lifetime.

Hospital Room and Board benefits integrated for those persons covered under Unemployment Compensation Disability.

Pays 50% for other than normal hospital charges due to mental or nervous.

Hospital, Surgical and Medical Expenses:

After the deductible amount is applied, the plan will pay 80% of all covered hospital, surgical and medical expenses less any amount payable for hospital expenses under the California Unemployment Insurance Code.

Benefits Payable:

Insured expenses include the actual charges for necessary treatment and care of injury or sickness:

(a) by a hospital for room and board and other services required for purposes of treatment; and

(b) by a physician for professional services; and

(c) for services of legally licensed physiotherapists and graduate registered nurses provided such services are not rendered by a member of your family; and

(d) for drugs and medicines purchased under a physician's prescription; and

(e) for braces, crutches, artificial limbs, artificial eyes or for rental of a wheel chair, hospital-type bed or an artificial respirator; and

(f) for X-ray and laboratory examinations or X-ray therapy; and

(g) by a hospital or by a licensed ambulance service for necessary transportation by ambulance to and from the hospital; and

(h) by a dentist or dental surgeon for repair of damage to the jaw and natural teeth as the direct result of an accident.

A good general rule of thumb for medical expenses is, was it recommended by a physician or an osteopath for an illness or an accident.

Limitations Applicable to Comprehensive Medical Insurance. No coverage shall be provided for:

(a) any treatment or service not prescribed by a physician; or

(b) any treatment or service due to sickness which is covered by Workmen's Compensation Act or other similar legislation, or due to injury arising out of or in the course of any employment for wage or profit; or

(c) any treatment or service which is compensated for or furnished by the United States Government or any Agency thereof; and

(d) any charges for the services of a dentist or dental surgeon except for charges specifically provided for in this section, or any charges for hearing aids, glasses or eye examinations for the correction of vision or fitting of glasses; or

(e) covered charges shall not include charges for any treatment or service for the same injury or sickness for which treatment or service was received within ninety days before becoming insured until at least ninety days consecutively have elapsed in which no such treatment or service was received.

No benefits will be paid for medical care or services, nor will they count toward satisfying the cash deductible, or paid for or furnished under any other group, franchise, Blue Cross, Blue Shield, or other service or prepayment plan arranged through any employer, trustee, union, or employee benefit association, as reported to Bankers Life Company by the Group Policy Holder or otherwise, not only to the extent so paid for or furnished. Maternity coverage is not included.

LONG TERM LIABILITY

Included in our program will be the long term disability coverage which will provide the following benefits:

After 28 days of disability as a result of either accident or sickness, the plan will provide $66\frac{2}{3}\%$ of your earnings up to \$700 a month benefit. The accident coverage will protect you as long as your lifetime and the sickness benefit will provide up to \$700 monthly for the first five years of disability and 50% of your base wages (to a maximum of \$350.00 per month) after 5 years up to your 65th birthday.

Admitted in Evidence 2-23-66.

GENERAL COUNSEL'S EXHIBIT No. 3-K.

LOU EHLERS CADILLAC

Equipment Purchases Between
June 1 and September 10, 1965

DATE

July 14—Chevrolet Truck

July 14—Clarke Litter Vacuum

June 10—Clarke Floor Machine with Polish Brush

August 13—Sound Proof Booth for Body Shop

July 26—Gestetner Duplicating Machine

June 22—4 Parts Bins

August 13—Sun Motor Tester

August 24—Sioux Buffer

September 3—Fuel Pump Tester

Admitted in Evidence 2-23-66.

GENERAL COUNSEL'S EXHIBIT No. 3-L.
ASSIGNMENT OF AGREEMENT

For a valuable consideration, the receipt and adequacy of which is hereby acknowledged, the undersigned Louis W. Ehlers, does hereby assign and convey to Lou Ehlers Cadillac, a California corporation, all of the rights, benefits and obligations of said Louis W. Ehlers under that certain purchase and sale agreement, dated May 12, 1965, by and between said Louis W. Ehlers and General Motors Corporation (Cadillac Motor Car Division).

Dated: June 1, 1965.

/s/ L. W. EHLERS

/t/ Louis W. Ehlers

Lou Ehlers Cadillac, a California corporation, does hereby accept said assignment of the agreement of May 12, 1965, and does hereby agree to fulfill all of the duties and obligations of Louis W. Ehlers contained in said agreement.

Dated: June 1, 1965.

LOU EHLERS CADILLAC, a

California corporation

By /s/ L. W. EHLERS

/t/ Louis W. Ehlers, President

Admitted in Evidence 2-23-66.

GENERAL COUNSEL'S EXHIBIT No. 3-M.

[Letterhead]

September 22, 1965

Mr. Mark T. Nevill
818 North La Brea Ave.
Los Angeles, California 90038

Re: Cooksey v. Ehlers
Deposition of Lou Ehlers

Dear Mr. Nevill:

Enclosed herewith are copies of Petitioner's Exhibits G-1, G-2, G-3, G-4, G-5, H, and I.

The two most recent Parts Department hires are Daney M. Steffey, August 3, 1965 (formerly of Steffey Moving Co., Evansville, Indiana) and Michael B. Rothstein, August 17, 1965 (formerly of Cadillac Bixel agency).

Very truly yours,

/s/ R. W. LUND
of LATHAM & WATKINS

Encls.

cc. Herbert Ansell, Esq.

Admitted in Evidence 3-23-66.

GENERAL COUNSEL'S EXHIBIT No. 4.

LOU EHLERS CADILLAC

5151 Wilshire Blvd.

Los Angeles

MANAGEMENT AND SUPERVISION

	<u>June, 1965</u>	<u>Nov. 1965</u>
Pres. & Gen. Mgr.	L. W. EHLERS	L. W. EHLERS
Vice Pres. & Gen. Sales Mgr.	L. J. BENNETT	L. J. BENNETT
Bus. Mgr.	E. F. JENNIK	E. F. JENNIK
New Car Sales Mgr.	J. D. HERNDON#	J. D. HERNDON#
Asst. Used Car Sales Mgr.	J. JAMES#	
Office Mgr.	A. R. MAKINSON#	C. I. EATON
Parts Mgr.	V. R. KENNEL#	P. A. DEL MONTE#
Service Mgr.	E. C. GRAHAM#	M. WHITEHEAD
Asst. Service Mgr.		G. R. WILLER
Shop Foreman	L. R. BOLSTAD	T. A. STROJEK
" "	G. A. HANSEN	D. MARCHIONE#
Body Shop Mgr.	R. ROGERS	R. ROGERS
Asst. Body Shop Mgr.		A. G. McDONALD

#Employed by Cadillac Motor Car Division at 5151
Wilshire Blvd., in May, 1965.

Admitted in Evidence 2-23-66.

GENERAL COUNSEL'S EXHIBIT No. 5.

[LETTERHEAD]

June 14, 1965

Mr. Louis Eberhardt
Supervising Examiner
National Labor Relations Board
849 South Broadway
Los Angeles, California 90014

Re: Lou Ehlers Cadillac
Case No. 21-CA-6744-3
Case No. 21-CA-6748-2

Dear Mr. Eberhardt:

This is in reply to the charges filed by the Painters Union, Local 1798 (No. 6744) and by District Lodge 94, IAM (No. 6748).

Effective June 1, 1965, the Employer began the operation of a franchised Cadillac new and used car and service dealership at 5151 Wilshire Boulevard. Prior thereto the Cadillac Motor Car Division of General Motors Corporation had operated an agency at the same location. Apparently GM had in effect a collective bargaining agreement with District Lodge 94 for Local 1186 of the IAM and Painters Local 1798 covering painters, mechanics, and other service personnel employed by GM at the foregoing address and at another Los Angeles agency operated by GM. The Employer did not at any time assume that contract.

The Employer did not on or about May 30, 1965 or at any time discharge the employees covered by such contract. It obviously could not, as they were employees

of GM which, so we understand, early in May advised all the employees of its Wilshire agency that they were terminated as of May 28, 1965 (or May 31, 1965) and subsequently paid them off as terminated employees.

The Employer hired its own complement of workers, including many—but far from all—of the former GM employees. Prior to hiring such employees the Employer did determine its own terms and conditions of employment, and so far as the employees here involved are concerned did not negotiate such terms and conditions with them. Nor did the Employer negotiate such terms and conditions with either of the unions.

It is not true that “representatives of the Machinists and Painters unions attempted to meet with the Employer to negotiate the effects of the change-over in management as such would relate to the conditions of employment of the employees covered by the contract.” It is true that it is the position of the Employer that the GM contract is not binding on it and therefore it has not observed the terms of such contract.

We cannot tell from the charges whether the unions are asserting therein that aside from the asserted effect of the GM contract they represent a majority of the Employer’s employees in any appropriate bargaining unit or units, nor whether they assertedly represent employees in separate units or jointly in one unit, or what is the claimed appropriate unit or units. We read the charges as meaning only a claim to representation based upon the contract. At no time since the Employer began operations has either union asserted to the Employer or any of his representatives that it, or both of them, has been designated as representative by a major-

ity of the Employer's employees in any appropriate bargaining unit or units. The Employer has no reason to believe that they have been so designated and does not believe that either or both of the unions represents a voluntary majority of its employees in any appropriate unit or units. It is true that the Employer has not recognized either of the unions, or both of them, as majority representative of any unit or units of its employees and has not negotiated with the unions, or either of them.

It is not true that the Employer has discharged any employees or refused to hire applicants for employment for the reason that the employees are allegedly represented by the Painters Union. It is also untrue that any of the Employer's conduct was "designed for the purpose of frustrating the wishes of the employees to be represented by the Machinist Union and the Painters Union."

Except as herein specifically admitted, the Employer denies each and all of the allegations of the charges and denies that it has violated subsections (1), (3), or (5) of Section 8(a) of the Act.

The charges have no merit and should be dismissed promptly. However, if you need any additional information, please advise the undersigned.

Very truly yours,

/s/ R. W. LUND
of LATHAM & WATKINS

Admitted in Evidence 2-23-66.

GENERAL COUNSEL'S EXHIBIT No. 6-A.

AGREEMENT made and entered into this 1st day of December, 1964 by and between the CADILLAC MOTOR CAR DIVISION OF GENERAL MOTORS CORPORATION, a Delaware Corporation having service stations located at 1076 West Seventh Street, and 5151 Wilshire Boulevard, City of Los Angeles, State of California, party of the first part, hereinafter designated as the "Company" and the INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT LODGE #94, LOCAL #1186, AFL-CIO, AND AUTOMOTIVE, MARINE, PRODUCTION FINISHERS, EQUIPMENT MAINTENANCE AND PUBLIC SERVICE PAINTERS, LOCAL UNION 1798, BROTHERHOOD OF PAINTERS, DECORATORS & PAPER HANGERS OF AMERICA, AFL-CIO, parties of the second part, hereinafter designated as the "Union".

WITNESSETH:

ARTICLE I

RECOGNITION

Sec. 1. The Company hereby recognizes the Union, the International Association of Machinists, District Lodge #94, Local #1186, AFL-CIO, as exclusive representative of certain employees as hereinafter set forth, in the Company's service stations located at 1076 West Seventh Street, and 5151 Wilshire Boulevard, City of Los Angeles, State of California:

Mechanics, Polishers, Washers, Lubricators, Garage Attendants, Body and Fender men, Machinists, Elevator Operators, Trimmers, and Mainte-

nance men, but EXCLUDING Branch Manager, Assistant Branch Manager, Sales Manager, Used Car Manager, Service Manager, Assistant Service Manager, Parts Manager, Assistant Parts Manager, General Foremen, Foremen, Assistant Foremen, Inspectors, Timekeepers, Shop Clerks, Parts Clerks, Service Salesmen, Office Clerical Employees, New & Used Car Salesmen, Tower Operator, Pick-up Drivers-Parts, Pick-up & Delivery men, Guards, Operating Engineers, Supervisors, Clerical Employees, G.M. Tech Students, and Work Dispatchers;

for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment, subject to and in accordance with the provisions of the National Labor Relations Act, and applicable orders of the National Labor Relations Board.

The Company hereby recognizes the Union, Automotive, Marine, Production Finishers, Equipment Maintenance and Public Service Painters, Local Union 1798, Brotherhood of Painters, Decorators & Paper Hangers of America, AFL-CIO, as exclusive representative of certain employees as hereinafter set forth, in the Company's service stations located at 1076 West Seventh Street, and 5151 Wilshire Boulevard, City of Los Angeles, State of California:

Painters, but EXCLUDING Branch Manager, Assistant Branch Manager, Sales Manager, Used Car Manager, Service Manager, Assistant Service Manager, Parts Manager, Assistant Parts Manager, General Foremen, Foremen, Assistant Foremen, Inspectors, Timekeepers, Shop Clerks, Parts

Clerks, Service Salesmen, Office Clerical Employees, New & Used Car Salesmen, Tower Operator, Pick-up Drivers-Parts, Pick-up & Delivery men, Guards, Operating Engineers, Supervisors, Clerical Employees, G.M. Tech Students, and Work Dispatchers;

for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment, subject to and in accordance with the provisions of the National Labor Relations Act, and applicable orders of the National Labor Relations Board.

PURPOSE

Sec. 2. The purpose of the Agreement is to provide orderly collective bargaining relations between the Company and the Union, to secure a prompt and fair disposition of grievances, to eliminate interruptions of work and interferences with the efficient operation of the Company's business.

INTERFERENCE

Sec. 3. The Company will not interfere with, restrain or coerce employees because of membership or lawful activity in the Union, nor will it by discrimination in respect to hire, tenure of employment or any terms or conditions of employment, attempt to discourage membership in the Union.

COERCION

Sec. 4. The Union agrees that neither the Union nor its members will intimidate or coerce any employee in respect to his right to work or in respect to Union activity or membership, and further that there shall

be no solicitation of employes for Union membership or dues on Company time. The Union further agrees that the Company shall take disciplinary action for any violations of this provision.

MANAGERIAL FUNCTIONS

Sec. 5. The right to hire, promote, discharge or discipline for cause, and to maintain discipline and efficiency of employes, is the sole responsibility of the Company, except that Union members shall not be discriminated against as such.

In addition, the products to be manufactured or serviced, the location of plants, the schedules of production, the methods, processes and means of manufacturing or servicing are solely and exclusively the responsibility of the Company.

ARTICLE II

REPRESENTATION

Sec. 1. There shall be three (3) committeemen and one (1) alternate committeeman designated by the employes covered by the Agreement, at 1076 West Seventh Street, and one (1) committeeman and one (1) alternate committeeman designated by the employes covered by this Agreement at 5151 Wilshire Boulevard, to represent them and to take up grievances with the Company. These committeemen shall constitute the Shop Committee. The alternate is to serve only in the absence of a committeeman.

Each member of the Shop Committee shall have a definitely defined area as may be agreed upon between the Shop Committee and the Plant Management. Where the Chairman of the Shop Committee is elected at large, the entire plant shall constitute his zone.

ELIGIBILITY OF REPRESENTATIVES

Sec. 2. No one shall be eligible to serve as a committeeman unless he is an employe covered by this Agreement and until his name has been placed on the seniority list and he is working in the service station.

Sec. 3. Any member of the Shop Committee promoted to a supervisory position or transferred outside the bargaining unit shall resign from the Committee and an eligible employe shall be elected to fill his place.

REPRESENTATION RULES

Sec. 4. Committeemen shall be permitted to leave their work after reporting to their respective foremen and recording their time, for the purpose of adjusting grievances in accordance with the Grievance Procedure. A committeeman will be permitted to leave his work during his regular working hours on his shift when he presents a written grievance to his foreman signed by the employe who made the complaint.

Sec. 5. Except as provided in Article VII, Section 11, committeemen will work at their regular work during the first hour of their respective shifts. Committeemen shall enter and remain in the service station only on their respective shifts unless otherwise agreed to by Management.

Sec. 6. Upon entering a department other than his own in fulfillment of his duties, the committeeman shall notify the foreman of that department of his presence and purpose if he has been sent for, or give the foreman a copy of the written complaint.

Sec. 7. For the purpose of representation in handling grievances as provided herein, committeemen will be retained at work, regardless of seniority, as long as

there is work they can do on a job that is operating, and shall be paid the current rate of pay for such work.

Sec. 8. The Company shall not be required to call the committeeman earlier than the regular starting time of his shift because some employes start work earlier than his starting time, nor give overtime when some employes start or quit later than his job.

Sec. 9. When on leave of absence, no employe shall serve as a committeeman.

Sec. 10. Committeemen shall be governed by the rules regarding employes entering and leaving the service station. However, members of the Shop Committee may leave the service station when arrangements are made with the Management by an officer of the Local Union or Chairman of the Shop Committee.

Sec. 11. The names of the committeemen shall be given in writing to the Management. No committeeman shall function as such until the Management has been advised of his selection, in writing, by the officers of the Local Union. Any changes in committeemen shall be promptly reported to the Management in writing.

NON-EMPLOYEE LOCAL UNION OFFICERS

Sec. 12. Officers of the Local Union, if not employed by the Company, will be permitted to attend meetings between the Shop Committee and the Branch Manager, or his representative, upon written request of a Shop committeeman given to the Branch Man-

ager at least twenty-four hours before each meeting. The Branch Manager or his representative shall not be requested to meet with more than two such Union representatives. Such Union representative or representatives must be prepared to show proper credentials.

ARTICLE III

DUES DEDUCTION

Sec. 1. During the life of the Agreement, the Company agrees to deduct Union dues levied by the International or Local Union in accordance with the Constitution and By-laws of the Union, from the pay of each employe who executes or has executed the following "Authorization for Check-Off of Dues" form; provided, however that the Corporation will continue to deduct monthly membership dues from the pay of each employe for whom it has on file an unrevoked "Authorization for Check-Off of Dues" form.

Sec. 2. A properly executed copy of such Authorization for Check-Off of Dues form for each employe for whom Union membership dues are to be deducted hereunder, shall be delivered to the Local Management before any payroll deductions are made, except as to employes whose authorizations have heretofore been delivered. Deductions shall be made thereafter, only under Authorization for Check-Off of Dues forms which have been properly executed and are in effect. Any authorization for Check-Off of Dues which is incomplete or in error will be returned to the Local Union by the Local Management.

To Cadillac Motor Car Division

Date

"I hereby assign to District Lodge #94, Local #1186, AFL-CIO, International Association of Machinists, from any wages earned or to be earned by me as your employe (in my present or in any future employment by you), such sums as the Financial Officer of said Local Union #1186 may certify as due and owing from me as membership dues, including an initiation or re-instatement fee and monthly dues in such sum as may be established from time to time by said local Union in accordance with the Constitution of the International Union, AFL-CIO, but not less than \$4.00 monthly. I authorize and direct you to deduct such amounts from my pay and to remit same to the Union at such time and in such manner as may be agreed upon between you and the Union at any time while this authorization is in effect.

"This assignment, authorization and direction shall be irrevocable for the period of one (1) year from the date of delivery hereof to you, or until the termination of the collective agreement between the Company and the Union which is in force at the time of delivery of this authorization, whichever occurs sooner; and I agree and direct that this assignment, authorization and direction shall be automatically renewed, and shall be irrevocable for successive periods of one (1) year each or for the period of each succeeding applicable collective agreement between the Company and the Union,

whichever shall be shorter, unless written notice is given by me to the Company and the Union not more than twenty (20) days and not less than ten (10) days prior to the expiration of each period of one (1) year, or of each applicable collective agreement between the Company and the Union, whichever occurs sooner.

“This authorization is made pursuant to the provisions of Section 302(c) of the Labor Management Relations Act of 1947 and otherwise.

(Signature of Employee Here)

(Address of Employee)

(Type or print name of Employee Here)

(City)

(State)

(Date of Signing)

(Employee's Clock No.)

(Date of Delivery to Employer)”

“To Cadillac Motor Car Division

Date

“I hereby assign to Automotive, Marine, Production Finishers, Equipment Maintenance and Public Service Painters, Local Union 1798, Brotherhood of Painters,

Decorators and Paper Hangers of America, AFL-CIO, from any wages earned or to be earned by me as your employe (in my present or in any future employment by you), such sums as the Financial Officer of said Local Union #1798 may certify as due and owing from me as membership dues, including an initiation or reinstatement fee and monthly dues in such sum as may be established from time to time by said local Union in accordance with the Constitution of the International Union, AFL-CIO but not less than monthly. I authorize and direct you to deduct such amounts from my pay and to remit same to the Union at such time and in such manner as may be agreed upon between you and the Union at any time while this authorization is in effect.

"This assignment, authorization and direction shall be irrevocable for the period of one (1) year from the date of delivery hereof to you, or until the termination of the collective agreement between the Company and the Union which is in force at the time of delivery of this authorization, whichever occurs sooner; and I agree and direct that this assignment, authorization and direction shall be automatically renewed, and shall be irrevocable for successive periods of one (1) year each or for the period of each succeeding applicable collective agreement between the Company and the Union, whichever shall be shorter, unless written notice is given by me to the Company and the Union not more than twenty (20) days and not less than ten (10) days prior to the expira-

tion of each period of one (1) year, or of each applicable collective agreement between the Company and the Union whichever occurs sooner.

"This authorization is made pursuant to the provisions of Section 302(c) of the Labor Management Relations Act of 1947 and otherwise.

(Signature of Employee Here)

(Address of Employee)

(Type or print Name of Employee here)

(City)

(State)

(Date of Signing)

(Employee's Clock No.)

(Date of Delivery to Employer)"

Sec. 3. Check off deductions under all properly executed Authorization for Check-Off of Dues forms which have been delivered to the respective local Managements on or before the effective date of this Agreement, shall begin with the month of December, 1964.

Sec. 4. Thereafter, on or before the fifteenth (15th) day of each month the Union shall deliver to the Company any executed Authorization for Check-Off of Dues forms under which Union membership dues are

to be deducted beginning with the following calendar month. After receipt of the Authorization for Check-Off of Dues form, the Union membership dues for each succeeding calendar month shall be deducted from the employee's first pay received in that month in which the employee has sufficient net earnings to cover the Union membership dues. In the event that membership dues, other than those for the calendar month in which the deduction is made and initiation fees have become due and owing by an employee subsequent to the effective date of said employee's Authorization for Check-Off of Dues form, but prior to the first deduction by the Corporation thereunder, such membership dues and initiation fees will be deducted by the Corporation at the time it makes the first deduction for membership dues. The Union will notify the Company in writing, when it makes delivery of Authorization for Check-off of Dues forms prior to the 15th of each month, of the amounts owing by employees who executed these forms.

Sec. 5. In the case of employees rehired, or returning to work after layoff or leave of absence, or being transferred back into the bargaining unit, who previously have properly executed Authorization for Check-Off of Dues forms, deductions will be made for membership dues as provided herein.

Sec. 6. In cases where a deduction is made which duplicates a payment already made to the Union by an employee, or where a deduction is not in conformity with the provisions of the Union Constitution By-Laws, refunds to the employee will be made by the Local Union.

Sec. 7. Deductions for any calendar month shall be remitted to the designated financial officer of the local Union not later than the twenty-fifth (25th) day of

the following month. The Company shall furnish the designated financial officer of the local Union monthly with a list of those for whom deductions have been made, and the amount of such deductions.

Sec. 8. Initiation fees for membership in the Union shall not exceed the maximum prescribed by the Constitution of the International Union at the time the employe becomes a member.

Sec. 9. The Company shall not be liable to the International Union or its Locals by reason of the requirements of this Section of the Agreement for the remittance or payment of any sum other than that constituting actual deductions made from employe wages earned.

Sec. 10. An employe who is a member of the Union at the time this Agreement becomes effective shall continue membership in the Union for the duration of this Agreement to the extent of paying an initiation fee and the membership dues uniformly required as a condition of acquiring or retaining membership in the Union.

Sec. 11. An employe who is not a member of the Union at the time this Agreement becomes effective shall become a member of the Union within ten (10) days after the thirtieth (30th) day following the effective date of this Agreement or within ten (10) days after the thirtieth (30th) day following employment, whichever is later, and shall remain a member of the Union, to the extent of paying an initiation fee and the membership dues uniformly required as a condition of acquiring or retaining membership in the Union whenever employed under, and for the duration of, this Agreement.

Sec. 12. The Union shall accept into membership each employe covered by this Agreement who tenders to the

Union the periodic dues and initiation fee uniformly required as a condition of acquiring or retaining membership in the Union.

Sec. 13. It is mutually understood that any provision of Article III, Sections 1 through 9 of this Agreement, including the provisions of any Agreement made a part of Article III, Sections 1 through 9 inclusive, which is or may be in conflict with any Federal or State Law shall be ineffective to the extent of such conflict, and shall be effective only if and when effective in accordance and consistent with requirement of Federal and State Law.

ARTICLE IV

GRIEVANCE PROCEDURE

Sec. 1. Should differences arise between the Company and the employes, there shall be no suspension of work, but an earnest effort shall be made to settle such differences immediately in the following manner:

FIRST STEP

- (a) Any employe having a grievance, or one designated member of a group having a grievance, shall first take the grievance up with the foreman, who will attempt to adjust it.

Any employe may request the foreman to call the committeeman for that district to handle a specified grievance with the foreman. The foreman will send for the committeeman without further discussion of the grievance.

SECOND STEP

- (b) If the grievance is not adjusted by the foreman, it shall be reduced to writing (if this has not already been done) on forms provided by the Com-

pany, and signed by the employe involved, and one copy shall be given to the foreman.

The Committeeman, with or without another committeeman, may then take the grievance up with the Department Manager, who will attempt to adjust it.

THIRD STEP

- (c) If the grievance is not adjusted at this point, the committeeman handling the grievance shall refer it to the Chairman of the Shop Committee who may designate himself or one other member of the committee to investigate the grievance. The Shop Committee as such may then take the grievance up with the General Service Manager.
- (d) If the grievance is not satisfactorily settled at this Step, the Shop Committee may appeal to the Branch Manager whose decision shall constitute decision of the highest Local Management.

DECISIONS

Sec. 2. A final decision on appealed grievances will be given by representatives of the highest local Management as soon as reasonably possible but in any event within a maximum of twenty (20) working days from the date of first written filing thereof. Any grievances not appealed from a decision at one step of this procedure in the service station to the next step within five working days of such decision, shall be considered settled on the basis of the last decision, and not subject to further appeal.

Sec. 3. Written answers will be given by the Management to all written grievances presented by the Shop Committee.

UMPIRE

Sec. 4. If the matter is not settled by the Branch Manager, then the case shall be referred to an impartial umpire satisfactory to and selected by both parties. Notice of intention to appeal a case to an impartial umpire must be filed by the party making the appeal within thirty (30) days after written decision by the Branch Manager or his representative.

EXPENSES

Sec. 5. The fees and expenses of the Umpire shall be paid one-half by the Company and one-half by the Union, and all other expenses shall be borne by the party incurring them. All cases shall be presented to the Umpire in the form of a written brief prepared by each party, setting forth the facts and its position and the arguments in support thereof. The Umpire may make such investigation as he may deem proper and may at his option hold a public hearing and examine the witnesses of each party and each party shall have the right to cross-examine the witnesses and to make a record of all such proceedings.

POWERS OF THE UMPIRE

Sec. 6. It shall be the function of the Umpire, after due investigation and within thirty (30) days after submission of the case to him, to make the decision in all claims of discrimination for Union activity or membership, and in all cases of alleged violation of the terms of this Agreement or supplements thereto in regard to recognition, representation, grievance procedure, seniority, disciplinary layoff and discharge, working hours, leaves of absence, Union bulletin boards, strikes and stoppages, vacation pay, holiday pay, Article

X, Sections 2, 3, 4 and 5, and any alleged violations of written local or national wage agreements. The Umpire shall have no power to add to or subtract from or modify any of the terms of this Agreement or any agreements made supplementary hereto, nor to establish or change any wage or any other section or paragraph of this Agreement not above enumerated. The Umpire shall have no power to rule on any issue or dispute arising under the Waiver Section or the Pension Plan, Insurance Program and Income Security Plan, except with respect only to the question of whether a discharged employee should receive a supplemental allowance pursuant to Section 7 of Article II of the Pension Plan (Exhibit A-1). Any case appealed to the Umpire on which he has no power to rule shall be referred back to the parties without decision.

Sec. 7. In disciplinary layoff and discharge cases the Umpire shall have the power only to adjudge the guilt or innocence of the employee involved. If the Umpire shall adjudge the employee innocent of the offense for which he was disciplined or discharged, the Company will reinstate the employee in full with accumulated seniority and in case the employee was penalized by loss of working time, will pay him back wages less any unemployment or other compensation from any source which he may have received during the period of his separation from the payroll of the Company, provided, however, that if the employee is again laid off or discharged in the course of the same calendar year and his state unemployment benefits are curtailed because of his prior receipt of state unemployment benefits during the aforesaid layoff or discharge, the Company will pay to the employee the difference between the amount

UMPIRE

Sec. 4. If the matter is not settled by the Branch Manager, then the case shall be referred to an impartial umpire satisfactory to and selected by both parties. Notice of intention to appeal a case to an impartial umpire must be filed by the party making the appeal within thirty (30) days after written decision by the Branch Manager or his representative.

EXPENSES

Sec. 5. The fees and expenses of the Umpire shall be paid one-half by the Company and one-half by the Union, and all other expenses shall be borne by the party incurring them. All cases shall be presented to the Umpire in the form of a written brief prepared by each party, setting forth the facts and its position and the arguments in support thereof. The Umpire may make such investigation as he may deem proper and may at his option hold a public hearing and examine the witnesses of each party and each party shall have the right to cross-examine the witnesses and to make a record of all such proceedings.

POWERS OF THE UMPIRE

Sec. 6. It shall be the function of the Umpire, after due investigation and within thirty (30) days after submission of the case to him, to make the decision in all claims of discrimination for Union activity or membership, and in all cases of alleged violation of the terms of this Agreement or supplements thereto in regard to recognition, representation, grievance procedure, seniority, disciplinary layoff and discharge, working hours, leaves of absence, Union bulletin boards, strikes and stoppages, vacation pay, holiday pay, Article

X, Sections 2, 3, 4 and 5, and any alleged violations of written local or national wage agreements. The Umpire shall have no power to add to or subtract from or modify any of the terms of this Agreement or any agreements made supplementary hereto, nor to establish or change any wage or any other section or paragraph of this Agreement not above enumerated. The Umpire shall have no power to rule on any issue or dispute arising under the Waiver Section or the Pension Plan, Insurance Program and Income Security Plan, except with respect only to the question of whether a discharged employe should receive a supplemental allowance pursuant to Section 7 of Article II of the Pension Plan (Exhibit A-1). Any case appealed to the Umpire on which he has no power to rule shall be referred back to the parties without decision.

Sec. 7. In disciplinary layoff and discharge cases the Umpire shall have the power only to adjudge the guilt or innocence of the employe involved. If the Umpire shall adjudge the employe innocent of the offense for which he was disciplined or discharged, the Company will reinstate the employe in full with accumulated seniority and in case the employe was penalized by loss of working time, will pay him back wages less any unemployment or other compensation from any source which he may have received during the period of his separation from the payroll of the Company, provided, however, that if the employe is again laid off or discharged in the course of the same calendar year and his state unemployment benefits are curtailed because of his prior receipt of state unemployment benefits during the aforesaid layoff or discharge, the Company will pay to the employe the difference between the amount

which he actually received from the State during the subsequent layoff or discharge and the amount which he would have received if the prior disciplinary layoff or discharge had not occurred. If the Umpire shall adjudge the employe guilty of the offense for which he was disciplined or discharged, the Company shall not be requested by the Umpire or the Union to modify the penalty imposed by the Company. After a case on which the Umpire is empowered to rule hereunder has been referred to him, it may not be withdrawn by either party except by mutual consent.

Sec. 8. No claims including claims for back wages, by an employe covered by this Agreement, or by the Union, against the Company shall be valid for a period prior to the date the grievance was first filed in writing, unless the circumstances of the case made it impossible for the employe, or for the Union as the case may be, to know that he, or the Union, had grounds for such a claim prior to that date, in which case the claim shall be limited retroactively to a period of thirty (30) days prior to the date the claim was first filed in writing.

Sec. 9. All claims for back wages shall be limited to the amount of wages the employe would otherwise have earned from his employment with the Corporation during the periods as above defined, less the following:

1. Any Unemployment Compensation which the employe is not obligated to repay or which he is obligated to repay but has not repaid or authorized the Corporation to repay on his behalf.
2. Compensation for personal services other than the amount of compensation he was receiving

from any other employment which he had at the time he last worked for the Corporation and which he would have continued to receive had he continued to work for the Corporation during the period covered by the claim.

Sec. 10. No decision of the Umpire or of Management in one case shall create a basis for a retroactive adjustment in any other case prior to the date of written filing of each such specific claim.

Sec. 11. There shall be no appeal from the Umpires decision, which will be final and binding on the Union and its members, and the employe or employes involved and the Company. The Union will discourage any attempt of its members and will not encourage or cooperate with any of its members in any appeal to any court or Labor Board, from a decision of the Umpire.

STRIKES OR STOPPAGES AND LOCKOUTS

Sec. 12. During the life of this Agreement, the Union will not cause or permit its members to cause, nor will any member of the Union take part in any sit-down, stay-in, or slow-down, or any curtailment of work or restriction of production or interference with the business of the Company. The Union will not cause or permit its members to cause nor will any member of the Union take part in any strike or stoppage of any of the Company's operations, or picket any of the Company's premises until all the bargaining procedure as outlined in this Agreement has been exhausted, and in no case on which the Umpire shall have ruled, and in no case on which the Umpire is not empowered to rule until after negotiations have continued for at least five

(5) days with the Branch Manager of the Los Angeles Branch, or his designated representative, and not even then unless authorized by the International Association of Machinists, District Lodge #94, Local #1186, AFL-CIO and the Automotive, Marine Production Finishers, Equipment Maintenance and Public Service Painters, Local Union #1798, Brotherhood of Painters, Decorators and Paper Hangers of America, AFL-CIO, and written notice of such intention to authorize has been delivered to the General Manager of the Cadillac Motor Car Division, Los Angeles Branch by Local #1186 and #1798 at least five (5) working days prior to such authorization. The Union will not cause or permit its members to cause nor will any member of the Union take part in any strike or stoppage of any of the Company's operations or picket any of the Company's plants or premises because of any dispute in issue arising out of or based upon the provisions of the Pension Plan, Insurance Program or Income Security Plan nor will the Union authorize such a strike, stoppage or picketing.

In case a strike or stoppage of production shall occur, the Company has the option of cancelling the Agreement at any time between the tenth (10th) day after the strike occurs and the day of its settlement.

Sec. 13. The Company reserves the right to discipline any employe taking part in any violation of this section of the Agreement. It is the duty of the employe to familiarize himself with the shop rules.

DISCIPLINARY CASES

Sec. 14. Any employe who has been disciplined by a layoff or a discharge may request the presence of his committeeman to discuss the case within an office designated by the Management, before he is required to leave the service station. The committeeman will be called promptly.

Sec. 15. Any employe who is removed from his work and taken to an office for interview may, if he so desires, call the committeeman for his district to be present with him during such interview. The committeeman, however, will be present only as a witness for the employe, and may negotiate on the matter only after the employe has a grievance as a result of the interview.

Sec. 16. It is important that complaints regarding unjust or disciplinary layoffs or discharges be handled promptly according to the grievance procedure. Grievances must be filed within three working days of the layoff or discharge and the Management will review and render a decision on the case within five (5) working days of its receipt. If a decision of the local Management in such case is not appealed by the Shop Committee within five working days, the matter will be considered closed.

Sec. 17. Upon execution of this Agreement, it is understood and agreed that any and all complaints and grievances of every kind and nature are hereby acknowledged to have been satisfactorily adjusted and are not subject to further discussion or appeal.

ARTICLE V

SENIORITY

HOW ACQUIRED

Sec. 1. Seniority shall be by occupational classification. Employees shall be regarded as temporary employees until they have acquired seniority. Employees may acquire seniority by working ninety (90) days during a period of six (6) months in which event, the employee's seniority will date back ninety (90) days from the date seniority is acquired. This provision shall apply retroactively to all temporary employees who have been laid off on or after the effective date of this Agreement.

There shall be no responsibility for the reemployment of temporary employees if they are discharged or laid off during this period.

TRANSFERS BETWEEN OCCUPATIONAL CLASSIFICATIONS

Sec. 2. When an employee is transferred from one occupational classification to another for any reason, there shall be no loss of seniority. However, the employee's seniority will not be transferred to another classification until he has worked therein for sixty (60) consecutive days. In the event there should be a decrease in work necessitating a layoff in the classification to which an employee has been transferred prior to his obtaining seniority in the new classification, he shall be transferred back to the occupational classification from which he was originally transferred.

No questions of seniority will be considered in any case of temporary transfers of employees to relieve temporary work peaks for less than one week.

SENIORITY LISTS

Sec. 3. Up-to-date seniority lists shall be made available to all employes for their inspection within the plants either by posting where practical or by a satisfactory equivalent method.

TRANSFERS

Sec. 4. The transferring of employes is the sole responsibility of the Management. In the advancement of employes to higher paid jobs when ability, merit, and capacity are equal, employes with the longest seniority will be given preference. Any claims of personal prejudice or any claims of discrimination for Union activity in connection with transfers may be taken up as grievances. Such claims must be supported by written evidence submitted within 48 hours from the time the grievance is filed.

It is the policy of Management to cooperate in every practical way with employes who desire transfers to new positions or vacancies in other wage classifications paying an equal rate to or below their present wage classification in their department. Accordingly, such employes who make application to their foreman stating their desire, qualifications, and experience, will be given preference for openings in their department provided they are capable of doing the job. However, employes who have made application as provided for above and who are capable of doing the job available, shall be given preference for the openings in their department over new hires. In case the opening is in an equal or lower rate classification and there is more than one applicant capable of doing the job, the applicant with the longest seniority will be given prefer-

ence. Any secondary job openings resulting from filling jobs pursuant to this provision may be filled through promotion, or through transfer without regard to seniority standing, or by new hire.

BREAKING SENIORITY

Sec. 5. Seniority shall be broken for the following reasons:

- (a) If the employee quits.
- (b) If the employee is discharged.
- (c) If the employee is absent for three consecutive working days without properly notifying Management, unless a satisfactory reason is given for not reporting such absence.
- (d) If the employee fails to return to work within five working days after being notified to report for work and does not give a satisfactory reason. Notification will be by registered mail to the last known address on file with the Service Manager.
- (e) If he is laid off for a continuous period until equal to the seniority he had acquired at the time of such layoff period.
- (f) Retirement as follows:
 - (1) An employee who retires, or who is automatically retired under the terms of the Pension Plan, shall cease to be an employee and shall have his seniority cancelled.
 - (2) An employee who has been retired on a permanent and total disability pension and who thereby has broken his seniority in accordance with subsection (1) above, but, who recovers and has his pension discon-

tinued, shall have his seniority reinstated as though he had been on a sick leave of absence during the period of his disability retirement, provided however, if the period of his disability retirement was for a period longer than the seniority he had at the date of retirement, he shall, upon the discontinuance of his disability pension, be given seniority equal to the amount of seniority he had at the date of such retirement.

- (3) If an employee retired for reasons other than total and permanent disability, who has lost seniority in accordance with subsection (1) above, is rehired, such employee will have the status of a new employee and without seniority, and he shall not acquire or accumulate any seniority thereafter, except for the purpose of applying the provisions governing Holiday Pay and Vacation Pay.

(g) Age:

Management may terminate the employment of any employee on or after the first day of the month following the month in which such employee reaches his 68th birthday. Any such termination shall cancel the employee's seniority.

LAYOFFS

Sec. 6. In a reduction of the working force in any department or classification, employees with less seniority will be laid off before employees with longer seniority, according to the seniority list.

When it becomes necessary to reduce the working force for reasons which Management believe to be temporary in nature, such layoff shall be by classification in the branch or department affected.

For the purpose of layoff and recall the seniority of employees covered by this Agreement shall be considered non-interchangeable with other employees in other locations covered by this Agreement.

After a layoff of thirty (30) continuous days, the employee's seniority in his classification shall become effective at both locations, and the employee with the least seniority working at either location in the same classification covered by the Agreement will be laid off and displaced by the employee with the greater seniority.

In increasing the working force, former employees with seniority will be recalled in the reverse order in which they were laid off. No new employees will be hired in any occupational classification until all former employees with seniority capable of doing the work in that classification have been rehired.

Nothing herein shall restrict the Company's right to hire additional employees when in its opinion the regular force is not able to handle the volume of business without overtime.

Temporary employees shall be laid off when in the opinion of the Company the regular force is able to handle the volume of business without overtime.

Sec. 7. The Management will, wherever possible, give at least twenty-four hours' notice prior to layoff to the employees affected.

Sec. 8. Any employee who has been incapacitated at his regular work by injury or compensable occupational

disease while employed by the Company, may be employed on other work in the service station which he can do without regard to any seniority provisions of the Agreement, except that such employe may not displace an employe with longer seniority.

Sec. 9. To protect his seniority, it is the employe's responsibility to keep the Management informed of his proper home address. The method of notification of change of address is to be in writing to the Service Manager.

Sec. 10. The employment of the following persons shall not be governed by seniority rules: Students, graduates of technical or professional schools and special employes receiving training as part of a formal training program.

ARTICLE VI

LEAVES OF ABSENCE

Sec. 1. Informal Leave. A leave of absence may be granted for personal reasons for a period not to exceed thirty (30) days, upon application of the employe to and approval of his foreman. Such leaves of absence shall not be renewed and seniority will accumulate during the leave.

Sec. 2. Formal Leave for Personal Reasons. Employes requesting formal leave of absence shall first make application in writing to their foreman on the form provided. Such leave of absence will be granted to an employe for not more than ninety (90) days on approval of the Management when the services of the employe are not immediately required and there are employes available in the service station capable of doing his work.

Such leaves of absence may be extended but the approval of the Branch Service Manager is required in such cases. Seniority will not accumulate during the period of formal leave of absence for personal reasons. Such formal leave of absence will not be granted an employe who is laid off, and will not be extended if the employe would have been laid off had he been working during his leave.

Sec. 3. Sick Leave. Any employe who is known to be ill, supported by satisfactory evidence, will be granted sick leave automatically for not to exceed ninety (90) days. If the sickness continues beyond ninety (90) days, sick leave shall be extended on approval of the Branch Manager or his designated representative. Seniority of such employes shall accumulate during sick leave and shall be broken, figured from the date the sick leave started, on the same basis as provided in Section 5(e) of Article V, for laid off employes breaking seniority.

Temporary employes without seniority shall not receive credit for time off sick toward the ninety (90) days of employment required to acquire seniority, and in no case shall a temporary employe's name be placed on the seniority list while away from work on sick leave. In compensable injury and legal occupational disease cases, sick leave will be granted automatically and seniority will accumulate for the full period of legal temporary disability, unless the employe has been kept at work on a job he can do as provided in Section 8, Article V, above.

Sec. 4. Leave of Absence for Union Activity. Any employe elected to a permanent office in, or as a delegate to, any labor activity necessitating a leave of

absence, shall be granted such leave not to exceed one year, and shall at the end of the term in the first instance, or at the end of the mission in the second instance, be guaranteed reemployment if there is sufficient work for which he is in line at the then current rate of pay. Seniority will accumulate during the period of such leaves.

Leaves of absence may be granted to employees for other Union activities and seniority shall accumulate during such leaves. Such leaves will be granted only when requests are made in writing to the Manager of the Branch in Los Angeles by the President of the Union or the Regional Director for the area in which the service station is located.

Sec. 5. Leave of Absence for Elective Public Office. Any employee with seniority elected to public office may make written application for a leave of absence for the period of his first term of active service in such elective office. Additional leaves of absence for service in elective public office may be granted at the option of local Management upon written application by the employee. Any employee granted such leave of absence shall be guaranteed reemployment, at the then current rate of pay, if there is sufficient work available which he is capable of doing and to which he may be entitled on the basis of seniority. Seniority will accumulate during the period of such leaves.

All the above leaves of absence, including sick leaves, are granted subject to the following conditions:

- (a) The return of an employee to work before the expiration of his leave of absence is at the option of Management.

- (b) Any employe who fails to report for work within three working days after the date of expiration of the leave, shall be considered as having voluntarily quit, unless he has a satisfactory reason.
- (c) If, upon the expiration of a leave of absence, there is no work available for the employe in line with his seniority, or if the employe would otherwise have been subject to layoff according to seniority during the period of the leave, the period which breaks seniority shall start from the date of expiration of the leave.

Sec. 6. Leave of Absence for Military Service. Any employe who enters into active service in the Armed Forces of the United States, as defined below, will be given a leave of absence for such period. Seniority will accumulate during such period of service. Upon the termination of such service, the employe shall be offered reemployment in his previous position or a position of like seniority, status and pay, unless the circumstances have so changed as to make it impossible or unreasonable to do so, in which event he will be offered such employment in line with his seniority as may be available which he is capable of doing at the current rate of pay for such work, provided he meets the following requirements:

- (1) Has not been dishonorably discharged.
- (2) Is physically able to do the work.
- (3) Reports for work within ninety days of the date of such discharge, or ninety days after hospitalization continuing after discharge for not more than one year.

As used in this section, "active service in the Armed Forces of the United States" is defined as and limited to:

Volunteering or being called into service as a member of the Army, Air Forces, Navy, or Marine Corps, provided that in time of peace such service, for the purposes of this Agreement and any military leave of absence issued to the terms thereof, shall not exceed one year.

Sec. 7. Educational Leave of Absence for Veterans. Employe veterans who have acquired seniority and who desire to further their education under the provisions of applicable federal laws, may make application for a leave of absence for that purpose.

One continuous leave of absence for such education will be granted to eligible employes for a period not to exceed twelve months, subject to the conditions set forth in Article VI, Section 5(a), (b) and (c) of this Agreement. Additional leaves of absence may be granted, at the option of local Management. Seniority shall accumulate during such leaves of absence.

Sec. 8. Leaves of Absence for Service in General Motors Defense Plants. Any employe whose services, because of conditions made necessary by the national defense of the United States, are needed by the Management in a plant of the Corporation other than the plant in which he has established his seniority and who accepts such employment, will be given a leave of absence from the plant in which he has seniority for the period his services may be required in such other plant and shall accumulate seniority in the plant from which he has been given a leave of absence, during the full period of such leave.

If the employe desires to return to employment in the original plant or when the Management of the defense plant no longer requires his services, the employe may return to the original plant in which he has seniority, in accordance with his seniority status, to his former or a similar job.

Sec. 9. An approved copy of all leaves of absence will be furnished to the employe.

ARTICLE VII

WORKING HOURS AND WAGES FOR THE PURPOSE OF COMPUTING OVERTIME PREMIUM PAY

HOURS

Sec. 1. For the purpose of this section on working hours, the employe's working week shall be the calendar week, beginning on Monday at the regular starting time of the shift to which he is assigned.

Sec. 2. For the purpose of computing overtime premium pay, the regular working day is eight hours. Employes shall be compensated on the basis of the calendar day (midnight to midnight) on which their shift starts working, for the regular working hours of that shift.

ASSIGNMENT OF WORK

Sec. 3. All work shall be distributed in rotation as the jobs come up, among all qualified employees in the same occupational classifications, and there shall be no discrimination on the division of work among employees of the same occupational classification other than that based upon qualification.

CALL-IN PAY

Sec. 4. Any employe called to work or permitted to come to work without having been properly notified that there will be no work, shall receive a minimum of four hours' pay at the regular hourly rate, except in cases of labor dispute, or other conditions beyond the control of the local Management.

COMPENSATION

STRAIGHT TIME

Sec. 5(a) For the first eight hours worked in any continuous twenty-four hour period, beginning with the starting time of the employe's shift.

(b) For time worked during the regular working hours of any shift which starts on the day before and continues into a specified holiday, Saturday, or Sunday.

TIME AND ONE-HALF

Sec. 6(a) For time worked in excess of eight hours in any continuous twenty-four hours, beginning with the starting time of the employe's shift, except if such time is worked on a Sunday or holiday when double time will be paid as provided below:

1. For time worked on any shift which starts on Saturday.

DOUBLE TIME

Sec. 7. For time worked during the first eight (8) hours worked on any shifts that start on Sundays and the following holidays: New Year's Day, Good Friday, Fourth of July, Labor Day, Thanksgiving, December 24, Christmas Day, December 31, and either Memorial

Day or one other such holiday of greater local importance which must be designated in advance by mutual agreement locally in writing, for time worked on the calendar Sunday or holiday in excess of the first eight (8) hours worked on any shift that starts on Sunday or one of the above holidays; and for time worked on a Sunday or holiday in excess of eight (8) hours worked on a shift which starts the previous day and runs over into Sunday or one of the above holidays.

EXCEPTIONS TO ABOVE OVERTIME PAYMENT

Sec. 8. Employees working in necessary continuous seven-day operations whose occupations involve work on Saturdays and Sundays shall be paid time and one-half for work on these days only for time worked in excess of eight hours per day or in excess of forty hours in the employee's working week, for which overtime has not already been earned, except as otherwise provided in Paragraph (1) below:

- (1) Such employees shall be paid time and one-half for hours worked on the employee's sixth work day in the week.
- (2) Such employees shall be paid double time for hours worked on the 7th week day in the calendar week if the 7th work day results from the employee being required to work on his scheduled off day(s) in that calendar week.
- (3) Such employees will be paid double time and one-quarter (2.25 times straight time) for the first eight (8) hours worked on any shift that starts

on any of the holidays listed in Article VII, Section 7; for time worked on the calendar holiday in excess of the first eight (8) hours worked on any shift that starts on any such holiday; and for time worked on the calendar holiday in excess of eight (8) hours worked on a shift which starts the previous day and runs over into any such holiday, provided, however, that if the particular holiday falls on the employee's regularly scheduled off day(s) and he receives holiday pay pursuant to Article VII, Section 10(b) of this Agreement, he will be paid double time instead of double time and one-quarter for such hours worked. In the case of employees who work 6 or 7 days during the work week, the first 8 hours worked at double time and one-quarter or double time, as the case may be, on shifts starting on such holidays shall be counted in computing overtime for work in excess of 40 hours in the employee's working week.

- (4) Such employees will be paid time and one-quarter (1.25 times straight time) for hours worked on the 7th work day in the calendar week, unless such hours are payable at an overtime premium rate under any other provision of this Agreement.
- (5) If such an employee receives holiday pay pursuant to Article VII, Section 10(b) for a particular holiday on which he does not work, that holiday will be counted as a day worked for the purpose of computing sixth or seventh day premium under sub-paragraphs (1), (2) and (4) above.

- (6) Such employes shall be paid an additional ten cents (10¢) per hour for time worked, which shall be included in computing vacation pay allowance, holiday pay, overtime and night shift premium.

Premium payments shall not be duplicated for the same hours worked under any of the terms of this Section.

Sec. 9. Computation of Overtime. Time and one-half and double time shall be paid at the individual's average earned rate, which shall be computed by dividing the total earnings at straight time for the week in which the overtime (as listed under Sections 6 and 7) occurred, by the number of available hours.

Sec. 10. Holiday Pay.

(a) Employes shall be paid as provided hereinafter, for New Year's Day, Good Friday, Memorial Day (or one other such holiday of greater local importance which must be designated in advance by mutual agreement locally in writing), Fourth of July, Labor Day, Thanksgiving Day, December 24, Christmas Day, and December 31 holidays, providing they meet all of the following eligibility rules unless otherwise provided herein:

- (1) The employe has seniority as of the date of the holiday, and
- (2) The employe would otherwise have been scheduled to work on such day if it had not been observed as a holiday, and
- (3) The employe must have worked the last scheduled work day prior to and the next scheduled work day after such holiday within the employe's scheduled work week.

- (4) Employees eligible under these provisions shall receive eight hours' pay for each of the holidays specified in Article VII, Section 10(a) computed at their regular straight time hourly rate exclusive of night shift and overtime premium. In the case of incentive workers, the employee's earned rate exclusive of night shift and overtime premium for the week in which the holidays fall, shall be used.

(b) An employee whose work is in necessary continuous seven-day operations as covered by Section 8, Article VII, shall receive holiday pay only in the event the holiday falls on one of his regularly scheduled days off, and he meets the other eligibility requirements of this Holiday Pay Section; provided, however, that such employee shall not receive holiday pay if he is scheduled to work on such day off and absents himself from scheduled work on such holiday without reasonable cause acceptable to Management.

(c) Employees of a General Motors plant who obtain employment in another General Motors plant will be eligible for holiday pay during their probationary period provided they have seniority in the home plant as of the date of the holiday and they are otherwise eligible under the terms of those provisions on Holiday Pay.

(d) Employees with the necessary seniority who have been laid off in a reduction of force, or who have gone on sick leave, or on leave of absence for military service, during the work week prior to or during the week in which the holiday falls, shall receive pay for such holiday.

(e) An employee who has been laid off because of model change, plant rearrangement, or inventory shall be eli-

gible for holiday pay under these Holiday Pay provisions, for a specified holiday falling within the period of such layoff providing he meets all the following eligibility rules:

(f) 1. The employee has seniority as of the date of the holiday.

2. The employee is ineligible for holiday pay for the holiday under the other provisions of this Holiday Pay Section.

3. The employee returns to work during the work week in which the holiday falls or during the work week immediately following the work week in which the holiday falls.

4. The employee works the first day he is scheduled to work following the holiday.

(g) When a holiday, specified above, falls within an eligible employee's approved vacation period or during a period when he receives jury duty pay pursuant to Article X, Section 2, of this Agreement, and he is absent from work during his regularly scheduled work week because of such vacation or jury duty, he shall be paid for such holiday.

(h) When an eligible employee is on an approved leave of absence and returns to work following the holiday but during the week in which the holiday falls, he shall be eligible for pay for that holiday. For the purpose only of applying this paragraph, December 24 and December 31 shall be considered to be in the same weeks respectively as Christmas Day and New Year's Day.

(i) Employees not working in necessary continuous seven-day operations who may be requested to work on

a holiday and have accepted such holiday work assignment and then fail to report for and perform such work, without reasonable cause, shall not receive holiday pay under this Holiday Pay Section.

(j) When any of the above-enumerated holidays fall on Sunday and the day following is observed as the holiday by the State or Federal Government, the day of observance should be considered as the holiday under the provisions of this Holiday Pay Section.

COMMITTEE PAY

Sec. 11. The Company shall pay each member of the Shop Committee, excluding the Chairman of the Committee, for time spent in adjusting grievances in their respective departments not to exceed two hours per week at the individual's base rate.

The Company, in addition, shall pay the Chairman of the Shop Committee for time spent in adjusting grievances, not to exceed eight hours per week at this hourly base rate.

The privilege of Committeemen to leave their work during working hours for the purpose of adjusting grievances without loss of pay is extended with the understanding that the time will be devoted to the prompt handling of legitimate grievances and will not be abused and that the Committeemen will continue to work at their assigned jobs at all times except when permitted to leave their work to handle grievances as provided herein.

An employee who is disciplined or discharged may request his Committeeman to handle a specified grievance before leaving the premises without regard to the restrictions on his time as provided in Article II, Section 5.

VACATION PAY ALLOWANCE

Sec. 12.

A. In lieu of vacation with pay, the following vacation pay allowance provisions shall apply during the term of this Agreement:

B. Vacation Pay Allowance Eligibility Dates

There shall be two eligibility dates, June 30 or December 31, on which dates employees may qualify for a vacation pay allowance and paid absence allowance as provided hereinafter.

C. Eligibility dates for vacation pay allowance and paid absence allowances shall be established as follows:

1. All employees with seniority dates between January 1 and June 30, both inclusive, and all employees with seniority dates prior to January 1, 1935, shall have June 30 as their annual vacation pay and paid absence allowance eligibility date.
2. All employees who have seniority dates between July 1 and December 31, both inclusive, of any year subsequent to 1934, except in the year 1944, shall have December 31 as their annual vacation pay and paid absence allowance eligibility date.
3. Employees with seniority dates between July 1 and December 31, both inclusive, in the year 1944, shall have June 30 as their annual vacation pay and paid absence allowance eligibility date until after June 30, 1959, at which time their annual vacation pay allowance eligibility date shall be changed to December 31 and shall remain December 31, thereafter.

D. Once an employe has established an eligibility date pursuant to Paragraph C-1 or C-2 or has had his eligibility date changed from June 30 to December 31, pursuant to Paragraph C-3, he shall not thereafter have his eligibility date changed even though his seniority date may thereafter be adjusted because of a formal leave of absence for personal reasons.

E. Employees with a June 30 eligibility date shall have their annual vacation pay allowance computed in accordance with Paragraph (F) below. Employees with a December 31 eligibility date shall have their annual vacation pay allowance computed in accordance with Paragraph (G) below.

F. June 30 Eligibility Date:

Any employe with a June 30 eligibility date as provided above who is covered by this Agreement and who has one or more years' seniority as of June 30 and who has worked during the pay period in which June 30 occurs, or who has been laid off since May 1, or went on sick leave or on leave of absence for military service since May 1, shall be eligible for vacation pay allowance on the following basis:

<u>Employee's Seniority As of Vacation Pay Eligibility Date</u>	<u>Percent of Gross Earnings for the 52 Pay Periods Ending with the Last Complete Pay Period in Which December 31 Occurs</u>
1 year but less than 3 years	2%
3 years but less than 5 years	3%
5 years but less than 10 years	4½%
10 years but less than 15 years	5¼%
15 years or more	6%

G. December 31 Eligibility Date:

Any employe with a December 31 eligibility date as provided above who is covered by this Agreement and who has one or more years' seniority as of December 31 and who has worked during the pay period in which December 31 occurs, or who has been laid off since November 1, or went on sick leave or on leave of absence for military service since November 1, shall be eligible for vacation pay allowance on the following basis:

<u>Employee's Seniority As of Vacation Pay Eligibility Date</u>	<u>Percent of Gross Earnings for the 52 Pay Periods Ending with the Last Complete Pay Period in Which June 30 Occurs</u>
1 year but less than 3 years	2%
3 years but less than 5 years	3%
5 years but less than 10 years	4½%
10 years but less than 15 years	5½%
15 years or more	6%

H. Any employe having one or more years' seniority who may be ineligible for a vacation pay allowance as of his vacation pay eligibility date under the above provisions, shall be entitled to a vacation pay allowance of 2%, 3%, 4½%, 5% or 6% of his gross earnings during his vacation pay eligibility year, based upon his seniority as of his vacation pay eligibility date in accordance with the above tables, provided he has worked during 13 of the 52 pay periods ending with the last complete pay period in which his vacation pay eligibility date occurs. For the purpose of this Vacation Pay Allowances Section only, a pay period during which an

employee qualifies for pay pursuant to Article X, Section 2 (Jury Duty) shall be counted as a pay period worked.

I. An employee shall become eligible for a paid absence allowance credit as hereinafter defined, provided he has at least one years' seniority as of his first eligibility date occurring after the effective date of this Agreement and has worked during at least 13 pay periods during the 52 pay periods ending with the last complete pay period in which his eligibility date occurs.

J. An eligible employee who has worked at least 26 pay periods in his eligibility year shall be entitled to 40 hours of Full Paid Absence Allowance credit.

K. An eligible employee shall be entitled to a percentage of the full paid absence allowance credit provided in Paragraph (J) above, based on the number of pay periods he works in his eligibility year, in accordance with the following:

<u>Pay Periods Worked</u>	<u>Percentage of Full Paid Absence Allowance Credit</u>
26	100%
25	96
24	92
23	88
22	84
21	80
20	76
19	73
18	69
17	65
16	61
15	57
14	53
13	50

L. An eligible employee may use his paid absence allowance credit during the eligibility year following the date such paid absence allowance is credited to him, provided his absence from work is for not less than four (4) continuous hours and is excused for his illness (when not receiving Sickness and Accident Insurance benefits), or personal business, or a leave of absence for vacation purposes.

M. Paid absence allowance shall be calculated on the basis of the employee's rate of pay, not including overtime and night shift premium, as of his last day worked. In the case of an incentive employee, payment shall be calculated at the employee's average hourly earned rate, not including overtime or night shift premium, for the hours worked in the last pay period in which the employee worked preceding the pay period in which the absence occurs.

N. An employee whose seniority at any and all General Motors plants is broken before his next eligibility date, shall be paid the unused portion, if any, of his paid absence allowance credit in accordance with Paragraph M above.

O. In the case of an employee who dies, the unused portion, if any, of his paid absence allowance credit shall be paid to his duly appointed legal representative if there be one, and, if not, to the spouse, parents, children, or other relative or dependents of such person as the Company in its discretion may determine. Such payment shall be calculated at the rate established in accordance with Paragraph (M) above.

P. An eligible employee who, at the time of his next eligibility date, has not used his entire paid absence allowance credit shall, in lieu of excused absence, be paid

the unused portion at the rate established in accordance with Paragraph (M) above, as of the last day worked prior to his eligibility date.

Q. An employe shall be entitled to receive a vacation pay allowance and a paid absence allowance credit based on only one eligibility date in any twelve months' period.

R. Irrespective of any employment or unemployment on the part of such employes, payment in lieu of vacation to which an employe is entitled pursuant to this section, and payment of the unused portion, if any, of paid absence allowance credit in lieu of excused absence to which an employe is entitled pursuant to Paragraph (P), shall be made as soon as possible but not later than 45 days after the employe's eligibility date, unless the employe elects in writing to take such payment at a later date, but in any event such payment will be made not later than five months after the employe's eligibility date.

S. Any employe who, under the provisions of the General Motors Hourly-Rate Employes Pension Plan, retires or is automatically retired prior to his eligibility date and is thereby ineligible for vacation pay allowance and a paid absence allowance credit for his vacation pay eligibility year may qualify for a vacation pay allowance and a paid absence allowance credit in accordance with the following:

An employe upon retirement shall be compensated for vacation pay allowance on the basis of the percentage of gross earnings to which his seniority entitles him for the period commencing with the first pay period subsequent to the pay period in which his last previous vacation pay eligibility date occurred and ending with the last day worked at the time of retirement.

T. An eligible employe upon retirement shall receive a paid absence allowance credit in accordance with Paragraph (N) above, if he has worked at least 13 pay periods in the eligibility year in which he retires, or in accordance with the following provisions if he has worked less than 13 pay periods in the eligibility year in which he retired:

For each pay period during which he worked within the eligibility year in which he retires or is retired, he shall be paid one twenty-sixth ($1/26$) of the full (40 hour) Paid Absence Allowance.

U. In the case of an employe who has worked during at least 13 pay periods in his eligibility year and who dies prior to his eligibility date, the vacation pay allowance and paid absence allowance credit to which he would have been entitled had he lived, based on the number of pay periods during which he worked, shall be paid to his duly appointed legal representative, if there be one, and, if not, to the spouse, parents, children, or other relative or dependents of such person as the Company in its discretion may determine.

V. In the case of an employe who goes on sick leave during one eligibility year and retires during his next eligibility year under the provisions of the General Motors Hourly-Rate Employees Pension Plan before returning to work, his retirement, for the purpose of this Vacation Pay Allowance Section only, shall be deemed to have occurred as of the day following his last day worked.

W. Any person transferred into a bargaining unit covered by this Agreement shall receive no more under this

Vacation Pay Allowance Section than the amount of money, if any, by which the vacation pay allowance and paid absence allowance to which he may thereafter become entitled under this Agreement during the calendar year in which such transfer occurs exceeds the amount of pay during vacation or the vacation allowance in lieu of taking vacation and paid absence allowance which he received from the Company for the same calendar year.

X. In determining the number of pay periods an employe shall have worked in his eligibility year, he shall be credited with one pay period for each pay period in which he performs work during that year in any General Motors plant.

Y. An employe disabled from working by compensable injury or legal occupational disease shall receive credit toward pay periods worked under this Vacation Pay Allowances Section for pay periods he would otherwise have been scheduled to work during the period of compensable disability, provided he has worked during at least 13 pay periods in his eligibility year and is otherwise eligible for a paid absence allowance credit.

Z. An eligible employe who is placed on or returns to work from a Leave of Absence for Military Service pursuant to Article VI, Section 6, and who has not worked at least 13 pay periods in the eligibility year in which his Leave of Absence for Military Service begins or ends shall receive a vacation pay allowance based upon his seniority as of his eligibility date in accordance with the tables in Paragraph (F) or (G) above, and a paid absence allowance credit in accordance with Paragraph (K) if he has worked at least 13 pay periods; or

if he has worked less than 13 pay periods in accordance with the following:

1. For each pay period during which he worked within the eligibility year in which the Leave of Absence for Military Service begins, he shall be paid one twenty-sixth ($1/26$) of the full (40 hour) Paid Absence Allowance.
2. For each pay period during which he worked within the eligibility year in which the Leave of Absence for Military Service ends, he shall be credited with one twenty-sixth ($1/26$) of the full (40 hour) Paid Absence Allowance.

AA. An employe shall be entitled to receive a vacation pay allowance and a paid absence allowance credit based on only one eligibility date in any twelve months' period. Moreover, the vacation pay allowance and paid absence allowance credit of an employe who holds seniority in two or more General Motors plans will be computed on the basis of the longest seniority held as of his eligibility date.

BB. Vacation Time Off Procedure

Management recognizes the desirability of providing vacation time off, up to the vacation pay allowance to which the employe's seniority would have entitled him on his last eligibility date prior to the requested time off, in a manner that preserves the maintenance of efficient operations while giving consideration to the desires of the employe.

Management at each plant will establish a procedure whereby employes, in the first quarter of each calendar year, may make application in writing for vacation time

off, indicating first, second and third choices. In the event more employes apply for time off than can be spared from the job at a given time, plant seniority will be the basis for resolving priority of applications for time off, except that applicants working on jobs which usually operate when the plant is shut down during such periods as model change, plant rearrangement or inventory will be given first consideration for time off during periods other than the shut-down period.

Each employe will be given a written disposition of his request. Approved vacation time off will not thereafter be cancelled or changed without the mutual consent of Management and the employe.

ARTICLE VIII

WAGES

Sec. 1.

(a) The annual improvement herein recognizes that a continuing improvement in the standard of living of employes depends upon technological progress, better tools, methods, processes and equipment, and a cooperative attitude on the part of all parties in such progress. It further recognizes the principle that to produce more with the same amount of human effort is a sound economic and social objective. Accordingly, effective as of September 6, 1965, each employe covered by this Agreement shall receive an annual improvement factor increase of two and one-half ($2\frac{1}{2}\%$) percent of his straight time hourly wage rate (exclusive of Cost-of-Living Allowance and shift premium), or six (6) cents per hour, whichever is the greater in accordance with Table I.

TABLE I.

<u>Straight Time Hourly Wage Rate</u>	<u>Annual Improvement Factor Increase</u>
Less than \$2.60	6¢ per hour
\$2.60-2.99	7¢ per hour
3.00-3.39	8¢ per hour
3.40-3.79	9¢ per hour
3.80-4.19	10¢ per hour
4.20-4.59	11¢ per hour
4.60-4.99	12¢ per hour

Effective as of September 5, 1966, each employe covered by this Agreement shall receive an annual improvement factor increase of two and eight-tenths (2.8%) percent of his straight time hourly wage rate (exclusive of Cost-of-Living Allowance and shift premium), or seven (7) cents per hour, whichever is the greater, in accordance with Table II.

TABLE II

<u>Straight Time Hourly Wage Rate</u>	<u>Annual Improvement Factor Increase</u>
Less than \$2.68	7¢ per hour
\$2.68-3.03	8¢ per hour
3.04-3.39	9¢ per hour
3.40-3.74	10¢ per hour
3.75-4.10	11¢ per hour
4.11-4.46	12¢ per hour
4.47-4.82	13¢ per hour

(b) In addition, effective September 7, 1964 and September 5, 1966, each employee covered by this Agreement shall receive a wage increase of two (2) cents per hour. Each of these two (2) cents per hour increases shall be added to the "wage rates" as provided in Article VIII, Section 1(d); provided, however, that the two (2) cents per hour increase effective September 5, 1966 shall be added after such "wage rates" have been adjusted to include the September 5, 1966 improvement factor increase provided for in Article VIII, Section 1(a).

(c) In addition, each employee covered by this Agreement shall receive a Cost-of-Living Allowance in accordance with the provisions of Article VIII, Sections 1(g)-(h).

It is agreed that only the Cost-of-Living Allowance will be subject to reduction so that if a sufficient decline in the cost of living occurs, employees will immediately enjoy a better standard of living. Such an improvement will be an addition to the annual improvement factor increase provided for in Section 1(a).

(d) The improvement factor increases in base rates provided for in Article VIII, Section 1(a) and the two (2) cents per hour increase provided for in Article VIII, Section 1(b) shall be added to the wage rates for each day-work classification. The Cost-of-Living Allowance provided for in Article VIII, Section 1(c) shall be added to each employee's straight time hourly earnings and will be adjusted up or down each three months in line with the Cost-of-Living Allowance as provided in Article VIII, Section 1(g)-(h).

(e) The amount of the Improvement Factor increase shown in the tables in Article VIII, Section

1(a) and the 2¢ per hour increase provided for in Article VIII, Section 1(b) for the "straight time hourly wage rate" of an incentive job classification shall be added to the base rate of that job classification.

(f) The Cost-of-Living Allowance will be determined in accordance with changes in the official Consumer Price Index for Urban Wage Earners and Clerical Workers (including Single Workers), published by the Bureau of Labor Statistics, U.S. Department of Labor, (1957-1959=100) and hereinafter referred to as the BLS Consumer Price Index.

(g) Effective with the pay period beginning December 7, 1964, and thereafter during the period of this Agreement, adjustments in the Cost-of-Living Allowance shall be made quarterly at the following times:

<u>Effective Date of Adjustment</u>	<u>Based Upon</u>
First Pay Period beginning on or after: December 1, 1964, and at quarterly intervals thereafter to June 1, 1967.	BLS Consumer Price Index as of: October, 1964, and at quarterly intervals thereafter to April, 1967.

In no event will a decline in the BLS Consumer Price Index below 106.5 provide the basis for a reduction in the wage scale by job classification.

(h) The amount of the Cost-of-Living Allowance shall be five cents (5¢) per hour effective for the period October 1, 1964, through December 6, 1964. Effective December 7, 1964, and for any three-month period thereafter as provided in Article VIII, Section 1(c)

and Section 1(g), the Cost-of-Living Allowance shall be in accordance with the following table:

<u>BLS Consumer Price Index</u>	<u>Cost-of-Living Allowance, In Addition to Wage Scale By Job Classification</u>
106.4 or less	None
106.5-106.8	1¢ per hour
106.9-107.2	2¢ per hour
107.3-107.6	3¢ per hour
107.7-108.0	4¢ per hour
108.1-108.4	5¢ per hour
108.5-108.8	6¢ per hour
108.9-109.2	7¢ per hour
109.3-109.6	8¢ per hour
109.7-110.0	9¢ per hour
110.1-110.4	10¢ per hour
110.5-110.8	11¢ per hour
110.9-111.2	12¢ per hour
111.3-111.6	13¢ per hour
111.7-112.0	14¢ per hour
112.1-112.4	15¢ per hour
112.5-112.8	16¢ per hour
112.9-113.2	17¢ per hour
113.3-113.6	18¢ per hour
113.7-114.0	19¢ per hour
114.1-114.4	20¢ per hour

and so forth with 1¢ adjustment for each 0.4 change in the Index.

(i) The amount of the Cost-of-Living Allowance which shall be effective for the period September 1, 1964, through September 30, 1964, shall be fourteen cents (14¢) per hour.

(j) The amount of any Cost-of-Living Allowance in effect at the time shall be included in computing over-

time premium, night shift premium, vacation payments, holiday payments, call-in pay, bereavement pay, and paid absence allowance.

(k) In the event the Bureau of Labor Statistics does not issue the Consumer Price Index on or before the beginning of the pay period referred to in Article VIII, Section 1(g), any adjustments required will be made at the beginning of the first pay period after receipt of the Index.

(l) No adjustments, retroactive or otherwise, shall be made due to any revision which may later be made in the published figures for the BLS Consumer Price Index for any base month.

(m) The parties to this Agreement agree that the continuance of the Cost-of-Living Allowance is dependent upon the availability of the monthly BLS Consumer Price Index in its present form and calculated on the same basis as the Index for July, 1964, unless otherwise agreed upon by the parties. If the Bureau of Labor Statistics changes the form or the basis of calculating the BLS Consumer Price Index, the parties agree to request the Bureau to make available, for the life of this Agreement, a monthly Consumer Price Index in its present form and calculated on the same basis as the Index for July, 1964.

(n) Effective October 1, 1964, nine cents (9¢) shall be added to the base wage rates for each day work classification in effect on that date (excluding employes on incentive basis of pay). Simultaneously, nine cents (9¢) shall be deducted from the Cost-of-Living Allowance in effect on September 30, 1964, and thereafter the Cost-of-Living Allowance shall be computed

in accordance with Article VIII, Section 1(g) and (h) above.

(o) In the case of employes on an incentive basis of pay, effective October 1, 1964, nine cents (9¢) shall be added to the earned rate of such employes. Simultaneously, nine cents (9¢) shall be deducted from the Cost-of-Living Allowance in effect on September 30, 1964, and thereafter the Cost-of-Living Allowance shall be computed in accordance with Article VIII, Section 1(g) and (h) above.

ARTICLE IX

FLAT RATE STANDARDS

Sec. 1. Flat rate standards shall be established on the basis of fairness and equity consistent with the quality of workmanship, efficiency of operations and the reasonable working capacity of normal operators. The Cadillac Motor Car Division local Management has full authority to settle such matters.

Sec. 2. When a dispute arises regarding standards established or changed by the Management, the complaint should be taken up with the foreman. If the dispute is not settled by the foreman, the committeeman for the district may, without regard to the restrictions on his time as provided in Section 5 of the Representation Section, upon reporting to the foreman of the department involved, examine the job and the foreman will furnish him with all of the facts of the case. If there is still a dispute after the committeeman has completed his examination, the foreman will then re-examine the operations in detail with the committeeman on the job. If the matter is not adjusted at this stage, it may be further appealed as provided in the Grievance Procedure.

ARTICLE X

GENERAL PROVISIONS

Sec. 1. Bulletin Boards. The Company will maintain bulletin boards which may be used by the Union for posting notices approved by the Management and restricted to:

- (a) Notices of Union recreational and social affairs.
- (b) Notices of Union elections.
- (c) Notices of Union appointment and results of elections.
- (d) Notices of Union meetings.

The number and location of such bulletin boards shall be decided by Management and the Shop Committee.

An employe with one or more years' seniority who is summoned and reports for jury duty, as prescribed by applicable law, shall be paid by the Company an amount equal to the difference between the amount of wages (excluding night shift premium and continuous operations premium) the employes otherwise would have earned by working during straight time hours for the Company on that day and the daily jury duty fee paid by the court (not including travel allowances or reimbursement of expenses), for each day on which he reports for or performs jury duty and on which he otherwise would have been scheduled to work for the Company.

The Company's obligation to pay an employe for jury duty is limited to a maximum of sixty (60) days in any calendar year.

In order to receive payment, an employe must give local Management prior notice that he has been sum-

moned for jury duty and must furnish satisfactory evidence that he reported for or performed jury duty on the days for which he claims such payment. The provisions of this Article X, Section 2, are not applicable to an employee who, without being summoned, volunteers for jury duty.

Sec. 2A. Bereavement Pay.

(a) When death occurs in an employee's immediate family, i.e., spouse, parent, parent of a current spouse, child, brother or sister, the employee, on request, will be excused for any of the first three (3) normally scheduled working days (excluding Saturdays and Sundays) immediately following the date of death, provided he attends the funeral.

(b) An employee excused from work under Paragraph (a) above, shall, after making written application, receive the amount of wages he would have earned by working during straight time hours on such scheduled days of work for which he is excused (excluding Saturdays and Sundays, or, in the case of employees working in necessary continuous seven-day operations, the sixth and seventh work days of the employee's ? ?

(c) Except for employees compensated on group bonus or piece work, payment shall be made at the employee's rate of pay, not including overtime and night shift premium, as of his last day worked. For employees on group bonus or piece work, payment shall be made at the employee's average hourly earned rate, not including overtime and night shift premium, for the hours worked during the last pay period in which the employee worked preceding the pay period in which he is excused. Time thus paid will not be counted as hours worked for purposes of overtime.

Sec. 3. The parties hereto agree that this Agreement is the entire Agreement between the parties hereto and that there are no oral or other Agreements or understandings between them.

Sec. 4. In the event any provisions of this Agreement shall be held contrary to existing or future Federal or State Laws, the remainder of the Agreement shall not be affected thereby.

Sec. 5. This Agreement, dated December 1st, 1964, shall continue in full force and effect without change until December 1st, 1967. If either party desires to terminate this Agreement, it shall, 60 days prior to December 1st, 1967, give written notice of the termination. If neither party shall give notice to terminate this Agreement as provided above, or to modify this Agreement as hereinafter provided, the Agreement shall continue in effect from year to year after December 1st, 1967, subject to termination by either party on 60 days' written notice prior to December 1st of any subsequent year.

If either party desires to modify or change this Agreement it shall, sixty days prior to December 1st, 1967, or any subsequent December 1st date, give written notice to such effect. Within ten days after receipt of said notice, a conference will be arranged to negotiate the proposals in which case this Agreement shall continue in full force and effect until terminated as provided hereinafter.

If notice of intention to modify or change has been given in accordance with the above provisions, this Agreement may be terminated by either party on thirty days' written notice of termination given on or after

the next November 1st following said notice of intention to modify or change.

Sec. 6. Pension Plan, Insurance Program and Income Security Plan. The parties have provided for a Pension Plan, Insurance Program and Income Security Plan by supplemental agreements signed by the parties simultaneously with the execution of this Agreement, which supplemental agreements are attached hereto as Exhibit "A", Exhibit "B", and Exhibit "C", respectively and made a part of this Agreement as if set out in full herein, subject to all provisions of this Agreement. No matter respecting the provisions of the Pension Plan, Insurance Program, or Income Security Plan shall be subject to the grievance procedure established in this Agreement, except as expressly provided in Article IV, Section 6, of this Agreement.

Sec. 7. Waiver. The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Therefore, the Company and the Union, for the life of this Agreement, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated, to bargain collectively with respect to any subject or matter referred to, or covered in this Agreement, or with respect to any subject or matter not specifically referred to or covered in this Agreement, even though such subject or matter may not have been within the knowledge or contem-

plation of either or both of the parties at the time that they negotiated or signed this Agreement.

In Witness whereof, the parties hereto have hereunto affixed their hands and seals this 1st day of December, 1964.

INTERNATIONAL ASSOCIATION OF
MACHINIST, DISTRICT LODGE #94,
LOCAL #1186, AFL-CIO

/s/ B. J. Hubert

/s/ Pete E. Falchi

/s/ Allen Elder

/s/ Russell T. Glover

AUTOMOTIVE, MARINE, PRODUCTION
FINISHERS, EQUIPMENT MAINTENANCE,
AND PUBLIC SERVICE PAINTERS LOCAL
UNION #1798, BROTHERHOOD OF
PAINTERS, DECORATORS AND PAPER
HANGERS OF AMERICA, AFL-CIO

/s/ John J. Lazzara

/s/ Edward O. Lee

CADILLAC MOTOR CAR DIVISION
GENERAL MOTORS
CORPORATION
LOS ANGELES BRANCH

/s/ L. J. Fazackerly

/s/ T. E. Cliff

CADILLAC MOTOR CAR DIVISION
GENERAL MOTORS
CORPORATION
DETROIT, MICHIGAN

/s/ J. G. Pais

Admitted in Evidence 2-23-66.

GENERAL COUNSEL'S EXHIBIT No. 6-B.

LOCAL WAGE AGREEMENT

This Wage Agreement, entered into this 1st day of December, 1964, between the Cadillac Motor Car Division, General Motors Corporation, having service stations located at 1076 West Seventh Street and 5151 Wilshire Boulevard, City of Los Angeles, State of California, and International Association of Machinists, District Lodge #94 Local #1186, AFL-CIO and Automotive, Marine, Production Finishers, Equipment Maintenance and Public Service Painters, Local #1798 Brotherhood of Painters, Decorators and Paper Hangers of America, AFL-CIO.

I. It is mutually agreed that the classifications, hourly base rates and guaranteed rates of employes covered by this Agreement shall be in accordance with Paragraphs 3 and 4 effective as shown below.

II. It is further agreed that the guaranteed rates shall apply only on a weekly basis and only in the event that an employe has not earned the equivalent of his guaranteed rate times the number of hour worked during the week.

III. Classifications:

	<u>Effective</u> <u>Sept. 7, 1964</u>	<u>Effective</u> <u>Sept. 6, 1965</u>	<u>Effective</u> <u>Sept. 5, 1966</u>
Mechanic	\$2.46	\$2.53	\$2.63
Painter	2.46	2.53	2.63
Body Man	2.46	2.53	2.63
Trimmer	2.46	2.53	2.63
Sheet Metal Man	2.46	2.53	2.63
Washer	1.97	2.03	2.12
Polishers	1.97	2.03	2.12
Lubricators	1.97	2.03	2.12

In addition to the above base rates, the 19¢—1953 Cost-of-Living, the 15¢—1958 Cost-of-Living, the 12¢—1961 Cost-of-Living and the 9¢ Cost-of-Living provided for in Article VIII, Section 1(n) of the Agreement dated December 1st, 1964, will be paid each clock hour worked to the employees classified as Washers, Polishers, and Lubricators covered by the Agreement dated December 1st, 1964 (Total 55 cents per clock hour).

In addition to the above base rates, the 15¢—1958 Cost-of-Living, the 12¢—1961 Cost-of-Living, and the 9¢ Cost-of-Living provided for in Article VIII, Section 1(o) of the Agreement dated December 1st, 1964, will be paid each clock hour worked to the employees classified as Mechanics, Painters, Body Men, Trimmers, and Sheet Metal Men, covered by the Agreement dated December 1st, 1964 (Total 36 cents per clock hour).

IV. New employees hired in the following classifications shall be hired at a rate no lower than ten cents (10¢) below the rate of the job classification and shall receive an automatic increase of five cents (5¢) at the expiration of thirty (30) days and, if retained, an additional increase of five cents (5¢) at the expiration of ninety (90) days or as soon as the employee can meet the standard requirements for an average employee on the job.

<u>Classification</u>	<u>Effective Sept. 7, 1964</u>	<u>Effective Oct. 1, 1964</u>	<u>Effective Sept. 6, 1965</u>	<u>Effective Sept. 5, 1966</u>
Garage Attendant	\$2.41	\$2.50	\$2.56	\$2.65
Elevator Operator	2.39	2.48	2.54	2.63
Maintenance Man	2.82	2.91	2.98	3.08

V. It is understood by both parties that this Agreement shall continue in full force and effect, without change, until December 1st, 1967.

VI. In witness whereof, the parties hereto have caused their names to be subscribed by their duly authorized officers and representatives the day and year first written above.

INTERNATIONAL ASSOCIATION OF
MACHINISTS, DISTRICT LODGE #94,
LOCAL #1186, AFL-CIO

/s/ B. J. Hubert

/s/ Pete E. Falchi

/s/ Allen Elder

/s/ Russell T. Glover

AUTOMOTIVE, MARINE, PRODUCTION
FINISHERS, EQUIPMENT MAINTENANCE,
AND PUBLIC SERVICE PAINTERS LOCAL
UNION #1798, BROTHERHOOD OF
PAINTERS, DECORATORS AND PAPER
HANGERS OF AMERICA, AFL-CIO

/s/ John J. Lazzara

/s/ Edward O. Lee

CADILLAC MOTOR CAR DIVISION
GENERAL MOTORS
CORPORATION
LOS ANGELES BRANCH

/s/ L. J. Fazackerly

/s/ T. E. Cliff

CADILLAC MOTOR CAR DIVISION
GENERAL MOTORS
CORPORATION
DETROIT, MICHIGAN

/s/ J. G. Pais

Admitted in Evidence 2-23-66.

GENERAL COUNSEL'S EXHIBIT No. 6-C.
CADILLAC MOTOR CAR DIVISION

SUPPLEMENTAL AGREEMENT TO AGREEMENT DATED DECEMBER 1, 1964, BETWEEN THE CADILLAC MOTOR CAR DIVISION OF GENERAL MOTORS CORPORATION AND THE INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT LODGE #94, LOCAL #1186 AFL-CIO AND AUTOMOTIVE, MARINE, PRODUCTION FINISHERS, EQUIPMENT MAINTENANCE AND PUBLIC SERVICE PAINTERS, LOCAL UNION #1798, BROTHERHOOD OF PAINTERS, DECORATORS AND PAPER HANGERS OF AMERICA, AFL-CIO.

Agreement made this 28th day of April, 1965, between the Cadillac Motor Car Division, General Motors Corporation and the International Association of Machinists, District Lodge #94, Local #1186 AFL-CIO and Automotive, Marine, Production Finishers, Equipment Maintenance and Public Service Painters, Local Union #1798, Brotherhood of Painters, Decorators and Paper Hangers of America, AFL-CIO, supplementing the Agreement dated December 1, 1964, between the parties.

It is hereby agreed that in recognition of the conditions as they presently exist in the Los Angeles Branch of the Cadillac Motor Car Division, Los Angeles, California, hourly employes at 1076 West Seventh Street and at 5151 Wilshire Boulevard, City of Los Angeles, State of California, may waive their seniority rights and take a layoff out of line of seniority under the

seniority provisions of the existing agreement provided that their services are no longer needed at the Cadillac Motor Car Division, Los Angeles Branch.

In witness whereof, the parties hereto have caused their names to be subscribed by their duly authorized representatives the day and year first written above.

INTERNATIONAL ASSOCIATION OF
MACHINISTS, DISTRICT LODGE #94,
LOCAL #1186, AFL-CIO

/s/ J. B. HUBERT

AUTOMOTIVE, MARINE, PRODUCTION
FINISHERS, EQUIPMENT MAINTENANCE
AND PUBLIC SERVICE PAINTERS LOCAL
UNION #1798, BROTHERHOOD OF
PAINTERS, DECORATORS AND PAPER
HANGERS OF AMERICA, AFL-CIO

/s/ JOHN J. LAZZARA

CADILLAC MOTOR CAR DIVISION
GENERAL MOTORS
CORPORATION
LOS ANGELES BRANCH

/s/ L. J. FAZACKERLY

/s/ T. E. CLIFF

CADILLAC MOTOR CAR DIVISION
GENERAL MOTORS
CORPORATION
DETROIT, MICHIGAN

/s/ J. G. PAIS

Admitted in Evidence 2-23-66.

GENERAL COUNSEL'S EXHIBIT No. 7-A.

May 19, 1965

Mr. Lou Ehlers
10300 West Wilshire Boulevard
Beverly-Comstock Apartments
Beverly Hills, California

Dear Mr. Ehlers:

This office is legal counsel for Machinists District Lodge 94 and its affiliated local lodges. The firm of Levy, DeRoy, Geffner, Koszdin & Glow is counsel for Painters Union 1798. The Cadillac agency located at Wilshire Boulevard, Los Angeles, is presently signatory to a collective bargaining agreement with the above unions. We have been advised that you will be commencing operations at that establishment on June 1, 1965.

The employees at the Wilshire branch and the above unions are concerned that this change will not adversely affect them.

In order to clarify the rights of the employees and above unions, and to deal with any questions that may arise on the part of all parties concerned, we are requesting a meeting at your very earliest convenience. This meeting should include a representative of your company, the Painters Union and its attorney, Leo Geffner, the Machinists Union, and myself, as its attorney.

Please contact the undersigned or Mr. Geffner at HUBbard 39630 regarding such meeting. A convenient time for the unions, Mr. Geffner and myself would be on Friday afternoon, May 21, 1965, or Monday, May 24th at 3 p.m. or thereafter. In view of Mr.

Geffner's central location, I would suggest that the meeting be held at his office.

Very truly yours,

RICHMAN, GARRETT & ANSELL

/s/ By HERBERT M. ANSELL

Herbert M. Ansell

HMA:ml

cc: Leo Geffner, Esq.

1520 Wilshire Blvd.

Los Angeles, Calif.

Mr. John Lazarra

846 South Union Avenue

Los Angeles, Calif.

Herbert Cooksey, IAM Dis. 94

214 South Loma Drive

Los Angeles, Calif.

Barney Hubert, IAM Dis. 94

214 So. Loma Drive

Los Angeles, Calif.

Admitted in Evidence 2-23-66.

GENERAL COUNSEL'S EXHIBIT No. 7-B.

[Letterhead]

June 3, 1965

Mr. Richard Lund, Esq.

Latham & Watkins

Attorneys at Law

615 South Flower Street

Los Angeles, California 90017

Re: Cadillac agency—Lou Ehlers

Dear Mr. Lund:

This letter is being sent to you as representative of the above named person who, since June 1, 1965, has taken over the operation and control of the Cadillac agency located at 5151 Wilshire Boulevard, Los Angeles, California. You have previously advised that the employer does not consider himself bound by the terms of the existing collective bargaining agreement between the Machinists and Painters Union and Cadillac Motor Car Division of General Motors Corp. Article IV of the said contract provides a comprehensive scheme for the processing of a grievance through to arbitration. At this time the Union requests that your client arbitrate the question as to whether the existing contract is binding upon him. To expedite this matter, I would be perfectly agreeable to waiving the preliminary grievance requirements contained in Section 1, 2 and 3. Section 4 provides for the reference of the dispute to an impartial umpire selected by both parties. I would suggest in this regard, that selection be made through the auspices of the U. S. Federal Mediation and Conciliation Service.

Would you please advise me at your very earliest convenience as to whether the company would be willing to resolve this dispute by means of arbitration.

This request is being rendered on behalf of IAM District Lodge 94, Local Lodge 1186, whom this office represents.

Yours truly,

RICHMAN, GARRETT & ANSELL

/s/ **By HERBERT M. ANSELL**

Herbert M. Ansell

HMA:ml

cc: Leo Geffner, Esq.
1520 Wilshire Blvd.
Los Angeles, Calif. 90017
Herbert A. Cooksey
IAM District Lodge 94
214 So. Loma Drive
Los Angeles, Calif. 90026
Barney Hubert
IAM District Lodge 94
214 So. Loma Drive
Los Angeles, Calif. 90026

Admitted in Evidence 2-23-66.

GENERAL COUNSEL'S EXHIBIT No. 7-C.

[Letterhead]

June 7, 1965

Herbert M. Ansell, Esq.
Richman, Garrett & Ansell
1325 Wilshire Blvd.
Los Angeles, California 90017

Re: Cadillac Agency—Lou Ehlers

Dear Mr. Ansell:

Please be advised, in reply to your letter of June 3, 1965, that Lou Ehlers declines your request for arbitration.

Very truly yours,

/s/ By R. W. LUND
of LATHAM & WATKINS

Admitted in Evidence 2-23-66.

GENERAL COUNSEL'S EXHIBIT No. 7-D.

[Letterhead]

June 8, 1965

Mr. Richard Lund
Latham & Watkins
Attorneys at Law
615 South Flower Street
Los Angeles, California 90017

Re: Cadillac Agency—Lou Ehlers

Dear Mr. Lund:

I am in receipt of your reply letter dated June 7, 1965, declining arbitration on behalf of Lou Ehlers.

Painters Union, Local 1798, through its legal counsel, Leo Geffner, has joined in this request and unless I hear from you within 48 hours from above date, I will assume that your refusing to arbitrate extends to the Painters Union, as well.

Yours truly,

RICHMAN, GARRETT & ANSELL

/s/ By HERBERT M. ANSELL

Herbert M. Ansell
Attorney for Machinists
District Lodge 94

LEVY, DeROY, GEFFNER,
KOSZDIN & GLOW

/s/ By LEO GEFFNER

Leo Geffner
Attorney for Painters Union
Local 1798

HMA:ml

cc: H. A. Cooksey
Barney Hubert
Leo Geffner, Esq.

Admitted in Evidence 2-23-66.

GENERAL COUNSEL'S EXHIBIT No. 7-E.

[Letterhead]

June 8, 1965

Mr. Richard Lund
415 South Flower
Los Angeles, California

RE: Lou Ehlers—Cadillac Agency

Dear Mr. Lund:

Please be advised that this office represents Painters Union, Local 1798.

On behalf of Painters Union, Local 1798 we are alleging that your Client, Lou Ehlers, is in violation of the existing Collective Bargaining Agreement between the Painters Union and Cadillac Motor Car Division, General Motors Corporation.

We are requesting that the issue of the application of the Agreement to your Client should be submitted to Arbitration in accordance with the Agreement. We are willing to waive the preliminary grievance steps and proceed directly to Arbitration.

648 *International Assn. of Machinists, etc. vs.*

Please advise us as to the position of your Client concerning this matter.

Very truly yours,
LEO GEFNER

LG/jw

cc: John Lazzara
Painters Union, Local 1798
846 S. Union Avenue
Los Angeles, California 90017

Mr. Herb Ansell
Attorney at Law
1325 Wilshire Boulevard
Los Angeles, California

Admitted in Evidence 2-23-66.

GENERAL COUNSEL'S EXHIBIT No. 7-F.

[Letterhead]

June 14, 1965

Leo Geffner, Esq.
Levy, DeRoy, Geffner, Koszdin
& Glow
1520 Wilshire Blvd., Suite 801
Los Angeles, California 90017

Dear Mr. Geffner:

Please be advised, in reply to your letter of June 8, 1965, that Lou Ehlers declines your request for arbitration.

Very truly yours,
/s/ By R. W. LUND
of LATHAM & WATKINS

Admitted in Evidence 2-23-66.

GENERAL COUNSEL'S EXHIBIT No 8.

GENERAL MOTORS CORPORATION
CADILLAC MOTOR CAR DIVISION
DIRECT DEALER SELLING AGREEMENT

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CADILLAC MOTOR CAR DIVISION
GENERAL MOTORS CORPORATION

Terms and Conditions

Direct Dealer

The following Terms and Conditions have by reference been incorporated in and made a part of the Selling Agreement which shall apply to and govern all transactions, dealings and relations between the parties:

DEFINITIONS AND SELLING PRIVILEGE

1. Definitions

As used in this Agreement, the following terms shall have the following meanings:

“Cadillac motor vehicles” and “motor vehicles” shall mean new passenger cars and chassis manufactured and distributed by Cadillac Motor Car Division of General Motors Corporation;

“Cadillac parts and accessories” shall mean parts and accessories manufactured by or for Cadillac, designed for use on Cadillac motor vehicles and distributed by Cadillac or any Division or Subsidiary of General Motors Corporation; and

“Area of sales responsibility” and “area of service responsibility” shall mean the area described in Paragraph FIRST of this Agreement.

2. Dealer's Selling Privilege

Dealer is granted the non-exclusive privilege of selling new Cadillac motor vehicles, parts and accessories, and, subject to the provisions of Section 16 hereof, Dealer is granted the non-exclusive privilege of displaying the various trademarks and service marks, including “Cadillac” and “La Salle”, and the several other word and design marks which Cadillac uses, in connection with the sale or offering for sale and servicing of Cadillac motor vehicles, parts and accessories.

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TERMS AND CONDITIONS OF SALE

3. Terms and Conditions of Sale— Motor Vehicles

A. Three Month Estimates of Requirements

To enable Cadillac to establish production schedules, and to place orders which its suppliers on the basis of the lead time normally required in the automobile mass production industry, and to have such schedules reflect the best combined estimate of Cadillac and its distributors and dealers of Cadillac motor vehicle requirements for future retail deliveries, Dealer will, unless otherwise advised by Cadillac, furnish Cadillac every month, on forms provided by Cadillac, an estimate of Dealer's requirements of new Cadillac motor vehicles for the next three (3) calendar months, each month's estimate to be shown separately.

B. Sales Reports

To assist Cadillac in the evaluation of current market trends and in the adjustment of established future production schedules, as well as current production schedules to the extent possible, Dealer will furnish Cadillac every ten (10) days with a sales report on forms furnished by Cadillac. Such report shall show retail sales of both new and used motor vehicles made during said period, new and used motor vehicle stocks, and unfilled orders on hand at the end of said period. Dealer shall also furnish Cadillac with such daily or interim sales reports, on forms furnished by Cadillac, as Cadillac may reasonably require in evaluating current dealer inventories and current distribution schedules.

C. Orders

Dealer shall submit orders for Cadillac motor vehicles to Cadillac for acceptance at mutually satisfactory periods. Such orders shall be submitted upon order forms supplied by Cadillac. Accepted orders for any standard motor vehicles not shipped during the month for which delivery was scheduled will remain in effect unless cancelled in whole or in part by either party upon written notice to the other. However, orders for "special" motor vehicles accepted by Cadillac for the convenience of Dealer may be cancelled only by Cadillac.

Any motor vehicle which differs from Cadillac's standard specifications and/or incorporates special equipment, and which because of such difference in specifications or increase in price has only a limited use or marketability, shall be considered "special".

D. Motor Vehicle Shipments

(1) Mode of Shipment

To integrate the shipment of assembled motor vehicles from plant sites with continuing plant production, to minimize required shipping facilities and storage areas, and to facilitate and expedite loading and transportation of vehicles by carriers, Cadillac will select the distribution point and the mode of transportation, but Cadillac will endeavor, whenever practicable, to follow Dealer's requests with respect to routing and mode of transportation.

(2) Delivery Charges

Cadillac will prepay all charges, including transportation charges, for the delivery of motor vehicles made to Dealer hereunder.

In addition to the prices and charges otherwise provided for herein, Dealer will pay Cadillac the destination charges established by Cadillac and in effect at the time of shipment for motor vehicles delivered to Dealer hereunder. Cadillac has the right at any time to change destination charges, to issue new applicable bulletins, and, if necessary, new applicable Price Lists.

(3) Liability for Demurrage

Dealer shall be responsible for and shall pay any and all charges for demurrage, storage, or other charges accruing after arrival of such shipment at destination.

(4) Diversions

If diversions are made upon Dealer's request or as a result of Dealer's failure or refusal to accept motor vehicles that may be shipped Dealer on Dealer's orders, unless such failure or refusal is excusable under the provisions of subsection B of Section 5 hereof, Dealer will assume responsibility for and pay the additional charges and expenses incident to such diversions.

(5) Claims

All claims for loss of or damage to motor vehicles shipped hereunder while in the possession of the transportation agency shall be submitted to Cadillac by Dealer within twenty (20) days after date of delivery of shipment to Dealer.

E. Payment by Dealer

Dealer shall pay Cadillac for each shipment of Cadillac motor vehicles, Dealer's prices established by Cadillac and in effect at the time of such shipment, together with a factory handling charge determined by Cadillac,

which shall include reimbursement to Cadillac for any tax which it has paid, incurred or agreed to pay on any such motor vehicles, on the following terms: cash, draft, or sight draft with bill of lading attached payable with collection charges. Dealer shall pay interest on all drafts in the amounts and from the dates specified therein.

F. Right to Change Prices.

Cadillac has the right at any time to change prices, discounts, terms and provisions affecting any Cadillac motor vehicles and to issue new applicable Price Lists or bulletins.

If Cadillac changes the prices, discounts, terms or provisions applicable to any motor vehicles, such changed prices, discounts, terms or provisions shall apply to any such motor vehicles ordered by Dealer and not shipped by Cadillac at the time such change is made effective by Cadillac.

Except with respect to the pricing of new yearly models or body types at the introduction thereof, Cadillac shall give written notice to Dealer of any change increasing the price to be paid by Dealer before shipping any current motor vehicles to which such change is applicable. Upon receipt of such notice, Dealer may cancel or modify orders for motor vehicles to which any such change applies, provided written notice of cancellation is delivered to Cadillac within ten (10) days after receipt by Dealer of Cadillac's notice. All undelivered orders not cancelled as provided herein shall remain in effect for delivery in accordance with said change.

G. Current Model Price Reduction Allowances

If Cadillac reduces the list price on any of its current models or body types of motor vehicles Cadillac will re-

fund or credit as an allowance to Dealer for each new and unused Cadillac motor vehicle (including demonstrators of the Cadillac Series "75" but excluding all other demonstrators) of that model or body type, which on the effective date of such reduction is in Dealer's stock unsold, an amount equal to the difference between Cadillac's list price, less the applicable dealer base discount thereon, for such vehicle prior to the effective date of such reduction and Cadillac's list price, less the applicable dealer base discount thereon, for such motor vehicle after the effective date of such reduction.

H. Model Change Allowances

In the event that Cadillac, at the time of an annual model change, shall discontinue a current model and body type of motor vehicle (hereinafter called "discontinued model motor vehicle") and substitute in place thereof a new model and body type identified by a new model year designation, Cadillac will make an allowance to Dealer on each new and unused discontinued model motor vehicle (including demonstrators of the Cadillac Series "75" but excluding all other demonstrators), which is in Dealer's stock unsold on the day (hereinafter called the "Announcement Day") on which the new model and body type is officially announced by Cadillac to the general public (local previewing announcements excepted) or on a day prior thereto designated by Cadillac.

If Cadillac elects to designate a day prior to Announcement Day, Cadillac will make the same allowance with respect to each such discontinued model motor vehicle which is purchased by Dealer from Cadillac between said designated day and the Announcement Day.

The amount of such allowance and the time of payment thereof shall be determined by Cadillac. Such allowance, however, shall in no case be less than five per cent (5%) of the list price of each such discontinued model motor vehicle.

I. Model Change at Reduced List Price Allowances

If, at the time of an annual Cadillac model change, the list price of the new model or body type is lower than the list price of the corresponding discontinued model or body type, Cadillac will refund or credit as an allowance to Dealer, for each new and unused Cadillac motor vehicle (including demonstrators of the Cadillac Series "75" but excluding all other demonstrators) of the discontinued model or body type, which is in Dealer's stock unsold on the Announcement Day, an amount equal to the difference between Cadillac's list price, less the applicable dealer base discount thereon, for such motor vehicle and Cadillac's list price, less the applicable dealer base discount thereon, for the corresponding motor vehicle of the new model or body type.

Cadillac shall not be required to make any refund or credit to Dealer under this subsection I if the new Cadillac models and body types are so changed in size, design and price, as for all practical purposes, to make such new models and body types a new and different series or line of motor vehicles. In the latter event, Cadillac will make such refund or allowance as shall, in its opinion, be equitable under the circumstances.

Dealer will be entitled to receive the allowances provided under this subsection I in addition to the model change allowance to which Dealer is entitled under subsection H hereof.

J. Applications for Model Change and Price Reduction Allowances

Dealer must submit written application on forms furnished by Cadillac (1) for the price reduction allowances provided for in subsections G and I of this Section 3 within thirty (30) days from the date the price reduction becomes effective; and (2) for the allowances provided for in subsection H of this Section 3 within thirty (30) days from the Announcement Day of new models or the date prior thereto designated by Cadillac on which Dealer's stock of discontinued models shall be determined, as the case may be. Each application for allowance must be properly documented with supporting data.

Cadillac reserves the right to pay any such allowance applicable to a motor vehicle in which a bank or other financing institution may have a security interest directly to such bank or other financing institution.

K. Warranty on Motor Vehicles

There are no warranties, expressed or implied, made by Cadillac to Dealer on the Cadillac motor vehicles or chassis furnished hereunder except as follows:

Cadillac warrants each new motor vehicle and chassis, including all equipment or accessories thereon (except tires), manufactured by it to be free from defects in material and workmanship under normal use and service, Cadillac's obligation under this warranty being limited to making good any part or parts thereof which shall, within ninety (90) days after delivery of such vehicle or chassis to the original purchaser or before such vehicle or chassis has been driven 4,000 miles, whichever event shall

first occur, be returned to Cadillac with transportation charges prepaid and which Cadillac's examination shall disclose to its satisfaction to have been thus defective; this warranty being expressly in lieu of all other warranties, expressed or implied, and all other obligations or liabilities on Cadillac's part, and Cadillac neither assumes nor authorizes any other person to assume for it any other liability in connection with such motor vehicles or chassis.

This warranty shall not apply to any motor vehicle or chassis which shall have been repaired or altered outside of an authorized Cadillac dealership in any way so as in the judgment of Cadillac to affect adversely its performance and reliability, nor which has been subject to misuse, negligence or accident.

4. Terms and Conditions of Sale— Parts and Accessories

A. Sales to Dealer

Cadillac will sell to Dealer either directly or through a designated parts warehouse, or will make available to Dealer indirectly through other outlets, new Cadillac parts and accessories.

B. Payment by Dealer

Sale of parts and accessories by Cadillac to Dealer will be made according to the prices, terms and provisions established by Cadillac and in effect at the time of shipment.

Payment for parts and accessories is due in accordance with statements rendered by Cadillac. If Cadillac

for reasons of credit deems it necessary to place shipments on a C.O.D. basis, collection charges, if any, are to be paid by Dealer.

C. Right to Change Prices

Cadillac has the right at any time to change prices, discounts, terms and provisions affecting any Cadillac parts and accessories and to issue new applicable Price Lists or schedules.

If Cadillac changes the prices, discounts, terms or provisions applicable to any parts or accessories, such changed prices, discounts, terms or provisions shall apply to any such parts or accessories ordered by Dealer and not shipped by Cadillac at the time such change is made effective by Cadillac.

D. Warranty on Parts and Accessories

There are no warranties, expressed or implied, made by Cadillac to Dealer on new Cadillac parts or accessories furnished hereunder except as follows:

Cadillac warrants each new Cadillac part or accessory sold hereunder separately, and not as a component part of a motor vehicle or chassis, to be free from defects in material and workmanship under normal use and service, Cadillac's obligation under this warranty being limited to making good any such part or accessory which shall, within ninety (90) days after sale thereof by Dealer "over-the-counter", or within ninety (90) days after installation thereof by Dealer on a motor vehicle or chassis or before such part or accessory so installed has been used on such motor vehicle or chassis for 4,000 miles after such installation,

whichever event shall first occur, be returned to Cadillac with transportation charges prepaid and which Cadillac's examination shall disclose to its satisfaction to have been thus defective; this warranty being expressly in lieu of all other warranties, expressed or implied, and all other obligations or liabilities on Cadillac's part, and Cadillac neither assumes nor authorizes any other person to assume for it any other liability in connection with such parts or accessories.

This warranty shall not apply to any part or accessory which is used for a purpose for which it was not designed or which shall have been repaired or altered in any way so as in the judgment of Cadillac to affect adversely its performance and reliability, nor which has been subject to misuse, negligence or accident.

E. Return of Defective Parts and Accessories

After notifying Cadillac and receiving specific shipping instructions therefor from Cadillac, Dealer may return for credit defective parts and accessories purchased directly from Cadillac or acquired as the result of performing warranty adjustments, at the then current dealer net prices of such parts or accessories plus ten per cent (10%). Such parts and accessories shall be packaged or crated and shipped, transportation charges prepaid. Dealer will be reimbursed for transportation charges prepaid by Dealer on authorized shipments of defective parts and accessories.

F. Return of Inactive Parts

In the event Dealer develops an inactive stock of Cadillac parts, or for any other reason desires to liquidate a

portion of its parts stock, Dealer may submit to Cadillac a list of those parts purchased directly from Cadillac, in good condition and unused, which Dealer desires to return for credit. Cadillac shall promptly review said list and notify Dealer as to which parts will be accepted. Thereupon Dealer may package or crate and ship such parts, transportation charges prepaid, in accordance with Cadillac's instructions. Cadillac will allow Dealer credit for such parts at the dealer net prices therefor in effect at the time such parts are received by Cadillac, less applicable stock order allowances thereon, if any, whether or not any such stock order allowances were made to Dealer when the parts were purchased by Dealer

G. Right to Return Parts within Ninety Days—Accessories within Thirty Days

Dealer may return any new parts purchased directly from Cadillac, which are in good condition and unused, for credit within ninety (90) days after receipt thereof by Dealer. Dealer may also return any new accessories, anti-freeze and other service supplies purchased directly from Cadillac, which are in good condition and unused, for credit within thirty (30) days after receipt thereof by Dealer; provided, however, that if Dealer shall have purchased accessories directly from Cadillac for use in connection with specific motor vehicles for which orders have been placed with and accepted by Cadillac, and such motor vehicles are not shipped to Dealer prior to the introduction of new motor vehicle models, thereby cancelling such orders, then to the extent such accessories are not usable on the new models and are in excess of Dealer's requirements they may also be returned to Cadillac for credit. Such parts, accessories and service supplies shall be packaged or crated and shipped

to the destination specified by Cadillac, transportation charges prepaid. Credit on new parts and accessories will be at Dealer's net cost. Dealer shall be entitled to return accessories whether same were purchased separately or shipped on or with a new Cadillac motor vehicle.

Dealer, however, will not be entitled to return materials which are acquired or fabricated specially by Cadillac upon Dealer's order for a particular service order or motor vehicle, or unlisted parts or assemblies, or any cut or fabricated upholstery or trim items.

5. Terms and Conditions of Sale—
Motor Vehicles, Parts and Accessories

A. Change of Design or Specifications

Cadillac may change the design or specifications of any Cadillac motor vehicles, parts or accessories at any time without notice and without obligation to make the same or any similar change upon any Cadillac motor vehicles, parts or accessories previously purchased by or shipped to Dealer or being manufactured or sold in accordance with Dealer's orders. Such changes shall not be considered Model Changes as contemplated by subsection H of Section 3 hereof.

B. Failure to Fill Orders.

Cadillac shall not be liable for failure or delay in filling orders of Dealer, which have been accepted by Cadillac, where such failure or delay is due, in whole or in part, to any labor, material, transportation, or utility shortage or curtailment, or to any labor trouble in the plants of Cadillac or its suppliers. Cadillac shall not be liable for failure or delay in filling orders of Dealer, which have

been accepted by Cadillac, where such failure or delay is due to any cause beyond the control or without the fault or negligence of Cadillac. Dealer shall not be liable for any failure to accept shipments of products ordered from Cadillac, where such failure is due to any labor trouble in Dealer's establishment. Dealer shall not be liable for any failure to accept shipments of products ordered from Cadillac, where such failure is due to any cause beyond the control or without the fault or negligence of Dealer.

OPERATING REQUIREMENTS

6. Dealer's Place of Business

In order to provide product representation commensurate with the good will attached to the name "Cadillac" and to facilitate the proper sale and servicing of Cadillac motor vehicles, parts and accessories, Dealer will maintain a place of business satisfactory as to appearance and location, and adequate in size and layout for new motor vehicle sales operations, service operations, parts and accessories sales and used car sales, and will maintain the business hours customary in the trade.

Once Dealer is established in facilities and at a location mutually satisfactory to Dealer and Cadillac, Dealer will not move to or establish a new different location, branch sales office, branch service station, or place of business including any used car lot or location without the prior written approval of Cadillac.

For the purpose of identifying the premises for which Cadillac may have an obligation under Section 22 hereof, Dealer shall submit to Cadillac, concurrently with the execution of this Agreement, a complete description of the location and the land and buildings to be used by

Dealer in the performance of this Agreement. Such descriptions shall be submitted on a "Statement of Direct Dealership Premises" form to be furnished by Cadillac. In the event of any approved change in Dealer's location or land and buildings during the term of this Agreement, a new "Statement of Direct Dealership Premises" shall be prepared and signed by Dealer and approved by Cadillac.

7. Capital Requirements

Since the amount and structure of owned net working capital and net worth required to handle properly the business to be conducted by Dealer hereunder depends upon many factors, including size of market, sales and service facilities required and anticipated volume, and since Cadillac sets minimum owned net working capital standards for its dealers based on Cadillac's past experience, Dealer, in accordance with a separate Minimum Capital Standard Agreement, to be executed by Dealer and Cadillac at the time of execution of this Agreement, shall establish Dealer's owned net working capital at the time and in the amount specified therein and shall maintain such amount as its minimum owned net working capital. If, due to changed conditions, it should become necessary to materially increase or decrease the amount of minimum owned net working capital required to handle Dealer's business properly, Dealer and Cadillac agree to establish a revised amount of minimum owned net working capital to meet such changed conditions. If the amount thereof is increased, Dealer will meet the new minimum owned net working capital requirements within the time agreed upon by Cadillac and Dealer.

8. Accounts and Records

A. Uniform Accounting System

It is to the mutual interests of Cadillac and Dealer that uniform accounting systems and practices be maintained by dealers in order that Cadillac may develop standards of operating performance which will enable dealers to obtain the most satisfactory results from the sales potentials assigned to them, and which will enable Cadillac to prepare composite dealer profit statements periodically to guide Cadillac in formulating policies beneficial to the dealers' interests.

Accordingly, Dealer will use and keep up to date a satisfactory uniform accounting system of a type designated by Cadillac and will furnish to Cadillac by the tenth of each month a complete and accurate financial and operating statement, with supporting data, covering the preceding month's operations and showing the true and actual condition of Dealer's business. Dealer will maintain said system in accordance with the Accounting Manual prescribed by Cadillac.

B. Records Supporting Claims

It is also to the mutual interests of Cadillac and Dealer that Cadillac's policies and procedures relating to applications for reimbursement for warranty and policy work, to parts wholesale compensation claims and to applications for discounts, allowances, refunds or credits under other Cadillac programs be uniformly applied to all Cadillac dealers.

Therefore, Dealer will prepare, keep up to date and retain, in accordance with the policies and procedures formulated by Cadillac, records in support of applica-

tions for reimbursement for warranty and policy work performed by Dealer, claims for parts wholesale compensation and applications for discounts, allowances, refunds or credits under other Cadillac programs in which Dealer participates.

C. Examination of Accounts and Records

In order to assure the maintenance of an accounting system of a type designated by Cadillac, Dealer will permit an examination of its accounts and records to be made by a person or persons, either in the employ of Cadillac or acceptable to Cadillac. A copy of the report of such examination will be furnished to both Cadillac and Dealer. Dealer will also permit Cadillac to make an examination and audit of Dealer's records supporting applications for reimbursement for warranty and policy work performed by Dealer, claims for parts wholesale compensation and applications for discounts, allowances, refunds or credits under other Cadillac programs in which Dealer participates.

9. Sale of Motor Vehicles

Dealer shall provide satisfactory sales performance and render satisfactory service to owners in the area described in Paragraph FIRST. Evaluation of Dealer's sales performance shall be based on the relationship of Dealer's sales of new Cadillac motor vehicles in such area to the sales of other makes of motor vehicles directly competitive therewith both in price and in product in such area, as compared to a similar relationship of the sales of new Cadillac motor vehicles to other makes of motor vehicles directly competitive therewith specifically in the Cadillac Branch, Zone or District area wherein Dealer is located, but not necessarily to the

exclusion of the National area. Such evaluation shall be based on records generally accepted for such purposes by the automobile industry and shall also take into account other pertinent factors, such as the trend of Dealer's sales performance over a reasonable period of time, the availability and the delivery of Cadillac motor vehicles to Dealer, and local conditions directly affecting such sales performance.

Where one or more other Cadillac dealers are located within the area described in Paragraph FIRST, the evaluation of the combined sales performance of all Cadillac dealers in such area shall be made as provided above, and Dealer's sales performance shall be measured by Dealer's contribution to the combined sales performance of all Cadillac dealers in such area. In evaluating Dealer's contribution to such combined sales performance, consideration shall be given to such factors as Dealer's sales performance over a reasonable period of time, the availability and delivery of Cadillac motor vehicles to Dealer, the geographic location of Dealer's place of business and the general shopping habits of the buying public within such area, Dealer's sales participation experience within such area, and Dealer's standard of sales participation within such area (if any) previously determined and accepted by Dealer and Cadillac.

10. Sales and Mechanical Staff

Dealer shall maintain a staff of salesmen and a selling and customer relations organization adequate to take care of the sales potential, and will employ a sufficient number of competent mechanics to meet adequately the service requirements of the owners of Cadillac motor vehicles, in Dealer's area of sales and service responsibility.

11. Sales and Service Records

In furtherance of the purposes, objectives, and obligations provided for in this Agreement, Dealer will keep complete and up-to-date records regarding the sale and servicing of new Cadillac motor vehicles and will permit Cadillac at all reasonable times in business hours to inspect such records.

12. Owner Complaints

Dealer will receive, investigate and handle all complaints received from owners of Cadillac motor vehicles with a view to securing and maintaining the good will of the public toward Dealer, Cadillac and Cadillac motor vehicles. All complaints received by Dealer which cannot be readily remedied shall be promptly reported in detail to Cadillac.

13. Treatment of Purchasers

A. Informing Purchasers as to Details of Their Purchases

Dealer will inform retail purchasers of Dealer's delivered prices and will give them itemized invoices covering the details of their purchases.

B. Representations as to Contents of Charges

Dealer will not make any misleading statements or misrepresentations as to the items making up the total selling price of a new Cadillac motor vehicle, or as to the prices related to such items, nor make any statements intended to lead any purchaser to believe that a greater portion of the selling price of a new Cadillac motor vehicle represents destination charges and factory handling charges than the amounts of such items actually charged to and paid for by Dealer.

C. Right of Retail Purchaser to Buy a New Motor Vehicle Without Purchasing Optional Equipment or Accessories

Dealer recognizes that a retail customer has the right to purchase new Cadillac motor vehicles without being required to purchase any optional equipment or accessories and Dealer, therefore, will either remove any optional equipment or accessories which the purchaser does not want, or will immediately order a new Cadillac motor vehicle without such optional equipment or accessories.

D. Advertising

Both Cadillac and Dealer recognize the need of maintaining the highest standards of ethical advertising at all times in order to secure and maintain public confidence in Dealer, Cadillac and Cadillac products.

Accordingly, Cadillac will not publish, cause to be published, encourage or approve any advertising relating to Cadillac motor vehicles, parts or accessories which is likely to mislead or deceive the public, and Dealer will not publish, cause to be published or approve any advertising relating to Dealer's sale of Cadillac motor vehicles, parts or accessories which is likely to mislead or deceive the public.

14. Care of Owner

A. Stock of Parts

Dealer will carry in stock at all times during the term of this Agreement an adequate inventory of parts and accessories to render proper service to owners of Cadillac motor vehicles in Dealer's area of sales and service responsibility.

B. Representation as to Parts

Dealer will not sell, offer for sale, or use in the repair of Cadillac motor vehicles as new Cadillac parts, any parts or parts which are not in fact new Cadillac parts as defined in Section 1 of this Agreement.

C. Conditioning of New Motor Vehicles

Dealer will condition each new motor vehicle before delivery, in accordance with Cadillac's pre-delivery inspection schedule.

D. Warranty Adjustments

In fulfillment of its warranty obligations to Dealer under subsection K of Section 3 hereof and, subject to the provisions of "Cadillac Policies on Direct Dealer Adjustments", for other policy and warranty work performed by Dealer with Cadillac's approval, Cadillac will reimburse Dealer therefor as follows:

Parts: If the replaced part or parts are returned to and found by Cadillac to be defective, Cadillac will pay or credit to Dealer an amount equal to the then current dealer net price of such part or parts plus ten per cent (10%). The return of such parts to Cadillac shall be made in accordance with the provisions of subsection E of Section 4 hereof.

Labor: Cadillac will pay or credit Dealer on the basis of the Cadillac Flat Rate System of time allotments as recommended and furnished by Cadillac at one hundred per cent (100%) of the labor rates related thereto as agreed upon with Cadillac.

E. Cadillac Policies on Direct Dealer
Adjustments

Dealer will comply with "Cadillac Policies on Direct Dealer Adjustments" established by Cadillac to foster and retain owner good will toward Cadillac dealers, Cadillac and Cadillac motor vehicles, parts and accessories. Such policies are reviewed periodically by Cadillac to assure the handling of adjustments properly and efficiently to secure the maximum benefits to be derived therefrom. Accordingly, Cadillac reserves the right at any time to change or modify the provisions of the "Cadillac Policies on Direct Dealer Adjustments," such changes or modifications to become effective upon notice thereof to Dealer.

F. Customer Relationship

Dealer will furnish to owners of Cadillac motor vehicles in Dealer's area of sales responsibility prompt, efficient and courteous service and will establish regular contact either by correspondence or personal interview with all persons purchasing Cadillac motor vehicles from Dealer.

15. Signs

Dealer will purchase, erect, and maintain at Dealer's expense the following signs:

A. Product Sign

A standard product electric sign in a conspicuous place outside Dealer's showrooms, provided the erection thereof is not prohibited by municipal ordinance or statute.

B. Service Sign

A standard authorized service sign in a suitable location on the outside of Dealer's place of business.

C. Other Necessary Signs

Such other signs as are necessary to advertise Dealer's business properly on a basis mutually satisfactory to both Cadillac and Dealer.

16. Trademarks and Service Marks

A. Exclusive Ownership

General Motors Corporation is the exclusive owner of the various trademarks and service marks, including the words "Cadillac" and "La Salle" and the several other word and design marks, which Cadillac uses in connection with motor vehicles, parts and accessories, and the servicing thereof.

B. Use by Dealer

Dealer is granted the non-exclusive privilege of displaying such trademarks and service marks in connection with the sale or offering for sale and servicing of Cadillac motor vehicles, parts and accessories, provided, however, that Dealer shall discontinue the display or use of any such mark or change the manner in which any such mark is displayed or used when requested to do so by Cadillac. Such marks may be used as part of the name under which Dealer's business is conducted only with the express approval of Cadillac.

C. Discontinuance of Use Upon
Termination

If any such mark is used as part of Dealer's business or corporate name or is used in signs, advertising or in any other manner by Dealer, Dealer will, upon termination of this Agreement, immediately discontinue all such use and display thereof. Thereafter, Dealer will

not use, either directly or indirectly any such marks or any other marks so resembling said marks as to be likely to cause confusion or mistake or deceive the public. Failure of Cadillac and Dealer to complete the purchase and sale of signs under the provisions of Section 21 of this Agreement shall not relieve Dealer of its obligations under the provisions of this subsection C to discontinue the use of such marks on such signs.

D. Dealer's Liability for Failure to
Discontinue Use

If Dealer shall refuse or neglect to keep and perform the provisions of subsections B or C above, Dealer shall reimburse Cadillac for all costs, attorneys' fees and other expenses incurred by Cadillac in connection with legal action to require Dealer to comply therewith.

17. Advertising and Promotional Program

In order that Cadillac dealers may be assured the benefits of comprehensive advertising of Cadillac products, Cadillac agrees to establish, pay for, and maintain a Cadillac Advertising and Promotional Program to promote the sale of Cadillac products for the mutual benefit of Cadillac and Cadillac dealers and to administer such program on a national and local basis.

Cadillac undertakes to make provision for such Advertising and Promotional Program in an aggregate amount on the basis of the amount per motor vehicle set forth in the Cadillac Direct Dealer Price List under the heading "Advertising and Promotional Program" for all new Cadillac motor vehicles sold and delivered by Cadillac to Cadillac dealers.

During the term of this Agreement the provisions of the Advertising and Promotional Program may be modified from time to time to limit or to broaden the application and coverage of such program. Moreover, the amount per Cadillac motor vehicle may be increased or decreased from time to time with the announcement of new yearly model vehicles to compensate for increases or decreases in advertising and other costs and for modifications in the program.

TERMINATION OF AGREEMENT

18. Termination

A. Termination by Dealer

Dealer may terminate this Agreement by written notice of termination delivered to Cadillac, such termination to be effective one (1) month after receipt by Cadillac of such notice.

B. Termination for Cause

(1) If Cadillac or Dealer requires a license for the performance of any obligation under or in connection with this Agreement in any state or jurisdiction where this Agreement is to be performed, then and in such event if either of the parties shall fail to secure or maintain a license or renewal thereof or if such license shall be suspended or revoked, irrespective of the cause or reason therefor, either party may immediately terminate this Agreement by giving to the other party written notice of such termination.

(2) If Dealer does not conduct its business in accordance with any requirement set forth in Sections 6 through 12, inclusive, or Section 14 of this Agreement, Cadillac may terminate this Agreement by giv-

ing to Dealer written notice of termination to be effective three (3) months after receipt of such notice.

(3) In the event of the death or incapacity (for reasons of health) of any person named in Paragraph THIRD hereof, Cadillac may terminate this Agreement.

However, to facilitate an orderly termination of the business relationships between Cadillac and Dealer and to facilitate any liquidation of the dealership business contemplated by Dealer, Cadillac will defer the exercise of such right to terminate for a period, to be determined by Cadillac, of not less than ninety (90) days and not more than one (1) year from the date of such death or incapacity, and will continue to operate with Dealer under the terms of this Agreement during such period and this Agreement will terminate at the expiration of such period, if Cadillac, within thirty (30) days from the date of such death or incapacity, receives a written request for such deferment from the executor(s), administrator(s) or representative(s) of such deceased or incapacitated person if he is the Dealer, or from the Dealer if Dealer is a proprietorship and such deceased or incapacitated person is not the Dealer, or from the remaining partner(s) in Dealer if Dealer is a co-partnership, or from the principal executive officer of Dealer if Dealer is a corporation. If such written request is not so received by Cadillac within such thirty (30) day period, Cadillac may then terminate this Agreement.

(4) Cadillac may terminate this Agreement immediately by delivering to Dealer or its representative written notice of such termination in the event of the happening of any of the following:

(a) Removal, resignation, withdrawal or elimination from Dealer for any reason of any person named in Paragraph THIRD of this Agreement.

(b) Any attempted transfer or assignment of this Agreement or any right or obligation hereunder.

(c) Any misrepresentation to Cadillac by Dealer or by any person named in Paragraph THIRD hereof in applying for this Selling Agreement or any misrepresentation to Cadillac by Dealer or by any person named in Paragraph THIRD hereof as to the direct and/or indirect ownership or management of Dealer; or any sale, transfer, relinquishment, voluntary or involuntary, by operation of law or otherwise, of any interest in the direct or indirect ownership or active management of Dealer without the prior written approval of Cadillac.

(d) Any dispute, disagreement, or controversy between or among principals, partners, managers, officers or stockholders of Dealer which may adversely affect the ownership, operation, management, business or interest of Dealer or Cadillac.

(e) Insolvency of Dealer; filing of a voluntary petition in bankruptcy by Dealers; filing of a petition to have Dealer declared bankrupt, provided that it is not vacated within thirty (30) days from date of filing; appointment of a receiver or trustee for Dealer, provided such appointment is not vacated within thirty (30) days from the date of such appointment; execution by Dealer of an assignment for the benefit of creditors.

(f) Conviction of Dealer or any principal officer, principal stockholder or manager of Dealer or any partner in Dealer of any crime which, in the opinion of Cadillac, may adversely affect the good will or interests of Dealer or Cadillac.

(g) Failure of Dealer to maintain dealership operation as a going business, open during customary business hours, for seven consecutive business days, provided such failure is not due to causes beyond Dealer's control and is without Dealer's fault or negligence.

(h) Any submission by Dealer to Cadillac of a false or fraudulent application, or claims or statements in support thereof, for reimbursement for warranty and policy work performed by Dealer, for parts wholesale compensation or for any other discount, allowance, refund or credit under any other Cadillac program.

C. Termination During Specified Period

In addition to Cadillac's right to terminate this Agreement for cause at any time in accordance with the provisions of subsection B of this Section 18, Cadillac may terminate this Agreement without cause during the months of August, September or October of any year by giving Dealer three (3) months prior written notice of termination.

19. Transactions After Termination

A. Effect of Termination on Orders

In the event that this Agreement is terminated, all orders of Dealer for motor vehicles, parts and accessories then outstanding shall be automatically cancelled. Termination of this Agreement shall not release Dealer, however, from the obligation to pay any sum which may then be owing Cadillac or from the obligation to pay for any motor vehicle or equipment for same which is special, as defined in subsection C of Section 3 of this Agreement, and which may have been ordered by Dealer and not shipped prior to any termination of this Agreement.

B. Termination Deliveries

In the event of termination of this Agreement under the provisions of subsection A of Section 18, or subsection B(3) of Section 18 without any deferment of termination as provided for therein, but not otherwise, Cadillac will use its best efforts to furnish Dealer with Cadillac motor vehicles to fill Dealer's bona fide retail orders on hand on the date of termination not to exceed, however, the total number of motor vehicles delivered to Dealer by Cadillac during the three (3) months immediately preceding the effective date of termination, subject to the following conditions and limitations:

- (1) Within ten (10) days following the date of termination, Dealer shall deliver to Cadillac a written schedule of Dealer's bona fide retail orders on hand on the date of termination. Such schedule shall show the name and address of each retail customer and the details with respect to each motor vehicle ordered, including model, body type, color and accessories and shall specify each bona fide order against which Dealer desires Cadillac to make delivery up to the total number of motor vehicles required to be delivered by Cadillac as above described. Those orders for which delivery is thus specified by Dealer, when approved by Cadillac, shall constitute Dealer's Schedule of Termination Deliveries. No changes or substitution may be made by Dealer in such Schedule of Termination Deliveries and Cadillac will not be obligated to make delivery of any motor vehicle to Dealer except as specified therein. In the event of Dealer's failure to deliver to Cadillac the detailed

Schedule about required, Dealer shall have no further rights.

(2) Dealer shall accept any motor vehicle required to be delivered by Cadillac hereunder against Dealer's Schedule of Termination Deliveries immediately upon notification by Cadillac of the availability to Dealer of such motor vehicle and in accordance with the terms and conditions of sale established by Cadillac and in effect at the time of shipment. In the event of its failure to do so, Dealer shall have no further right to receive such motor vehicle or any other motor vehicle in lieu of it.

(3) Motor vehicles shall be delivered by Cadillac hereunder in substantial accordance with the schedules and basis of delivery in effect with respect to other dealers in the same Cadillac Branch, Zone or District area at the time of Dealer's termination.

(4) Dealer shall give Cadillac notice immediately of cancellation for any reason of any retail order set forth in Dealer's Schedule of Termination Deliveries.

(5) In the event of the cancellation for any reason of any retail order set forth in Dealer's Schedule of Termination Deliveries before delivery by Cadillac of a motor vehicle to apply against such order, Cadillac shall be released from any obligation to make delivery of such motor vehicle.

(6) Dealer shall provide proper and adequate facilities in accordance with the terms and provisions of this Agreement to effect the delivery and handling of motor vehicles to be supplied upon termination under this subsection B.

C. Effect of Transactions After Termination

The acceptance of orders from Dealer or the continuance of sale of motor vehicles, parts, accessories or any other products to Dealer or any other act of Cadillac after termination of this Agreement shall not be construed as a renewal of this Agreement for any further term nor as a waiver of the termination.

20. Survivor's Rights

A. Rights of Surviving Persons

Named in Paragraph Third

In the event this Agreement is terminated by Cadillac under the provisions of subsection B(3) or subsection B(4)(a) of Section 18 hereof, and, at the time of such termination, another person is named in Paragraph THIRD of this Agreement, Cadillac shall offer a new Cadillac Direct Dealer Selling Agreement, similar to this Agreement, in which such other person will be named in Paragraph THIRD thereof, to a successor dealership designated by such other person, provided that such successor dealership is ready, willing and able to comply with the operating requirements of the then current Cadillac Direct Dealer Selling Agreement for a Cadillac dealership at the dealership location and the other financial participants in such successor dealership are approved by Cadillac, and provided, further, that such other person:

- (1) is named in Paragraph THIRD of this Agreement on the basis of participating in the operation hereof as distinguished from participating solely in the ownership hereof;

(2) has not waived his rights under this subsection A in an Interim Agreement Addendum to this Agreement;

(3) will actively and, in fact, participate in the operation of the successor dealership; and

(4) will own or acquire within a reasonable time (considering then existing circumstances) after the date of termination of this Agreement a financial interest of at least twenty-five per cent (25%) in the successor dealership.

If more than one other person is named in Paragraph THIRD of this Agreement at the time of such termination who can qualify under the conditions set forth above, such persons must agree in writing and notify Cadillac within thirty (30) days after the termination of this Agreement, as to which of them will designate the successor dealership and be named in Paragraph THIRD of the new Cadillac Direct Dealer Selling Agreement. If Cadillac does not receive such notice within such thirty (30) day period, Cadillac shall not be obligated to offer a new or substitute Selling Agreement to a successor dealership designated by any of such persons.

B. Widow's Financial Participation and Interim Agreement Addenda

In view of Cadillac's reserved right herein to terminate this Agreement under subsection B(3) of Section 18 hereof in the event of the death or incapacity (for reasons of health) of any person named in Paragraph THIRD hereof, Cadillac has made available to Dealer, for consideration in conjunction with the provisions of subsection A of this Section 20 a Widow's Financial

Participation Addendum form and an Interim Agreement Addendum form.

The Widow's Financial Participation Addendum provides that in the event that Cadillac should terminate this Agreement under the provisions of subsection B(3) of Section 18 hereof and a surviving person or persons named in Paragraph THIRD hereof should qualify as a person or persons to be named in Paragraph THIRD of a new Cadillac Direct Dealer Selling Agreement to be offered to a successor dealership under the provisions of subsection A of this Section 20, Cadillac will, with the approval of such surviving person or persons, consent to the acquisition or retention by the widow or wife, of the person named in Paragraph THIRD upon whose death or incapacity, as the case may be, the termination is predicated, of a financial interest in the successor dealership, subject, however, to a right in the surviving person or persons to buy out the widow's or wife's, as the case may be, interest within the period of time agreed to by the parties therein.

The Interim Agreement Addendum provides that, in the event Cadillac should terminate this Agreement under the provisions of subsection B(3) of Section 18 hereof, and if all other persons named in Paragraph THIRD of this Agreement, if any, shall have waived their rights to participate in the operations and ownership of a successor dealership under the provisions of subsection A of this Section 20, Cadillac will offer to a nominee named in the Interim Agreement Addendum a Cadillac Interim Direct Dealer Selling Agreement for a term comprising the next succeeding twenty-four (24) months following the effective date of such termination, if such nominee, at the time of such termina-

tion, meets the qualifications set forth in the Interim Agreement Addendum. The Interim Agreement Addendum also permits the Dealer, or any person named in Paragraph THIRD with the approval of Dealer and any other person named in Paragraph THIRD, to make an election as to whether or not the widow or wife, of the person named in Paragraph THIRD upon whose death or incapacity, as the case may be, the termination is predicated, shall have a right to acquire or retain a financial interest in the successor dealership.

Any request for the execution of a Widow's Financial Participation Addendum or an Interim Agreement Addendum to this Agreement shall be made by Dealer in writing to Cadillac and shall indicate that all persons named in Paragraph THIRD have approved the request. Such request in connection with an Interim Agreement Addendum shall name the person to be designated as nominee therein and outline his qualifications as an operator of a Cadillac dealership.

21. Cadillac's Right to Purchase When Agreement is Terminated

In the event of termination of this Agreement and upon compliance with the provisions hereinafter set forth, Cadillac will purchase from Dealer and Dealer will sell to Cadillac:

(1) Motor Vehicles: All new and unused Cadillac motor vehicles of the current model on hand in Dealer's place of business or in Dealer's possession at Dealer's net cost, including destination charges paid to Cadillac thereon.

(2) Parts: All unused and undamaged Cadillac parts listed in the current Cadillac Parts and Ac-

cessories Numerical Price List and purchased directly from Cadillac, or purchased from an outgoing Cadillac distributor or dealer as a part of Dealer's initial Cadillac parts inventory, and on hand in Dealer's place of business or in Dealer's possession, at the dealer net prices therefor in effect at the time such parts are received by Cadillac, less applicable stock order allowances thereon, if any, whether or not any such stock order allowances were made to Dealer when the parts were purchased by Dealer, plus five per cent (5%) of such purchase price for packing costs and plus reimbursement for transportation charges to destination specified by Cadillac.

(3) Accessories: All unused and undamaged Cadillac accessories and service supplies purchased directly from Cadillac during the twelve (12) month period immediately preceding the effective date of such termination and on hand in Dealer's place of business or in Dealer's possession at the dealer net prices therefor in effect at the time such accessories and service supplies are received by Cadillac, plus five per cent (5%) thereof for packing costs and plus reimbursement for transportation charges to destination specified by Cadillac.

(4) Signs: Any signs belonging to Dealer of a type recommended in writing by Cadillac and bearing the word "Cadillac", at a price mutually agreed upon by Cadillac and Dealer. If Cadillac and Dealer cannot agree on a price, they shall select a third party who shall set the price.

(5) Tools: Any special tools, which Dealer may elect to sell to Cadillac, of a type recommended by

Cadillac and designed specifically for service of Cadillac motor vehicles which were purchased by Dealer during the three (3) year period immediately preceding termination, while Dealer shall have been operating under a Cadillac Selling Agreement, at a price mutually agreed upon by Cadillac and Dealer. If Cadillac and Dealer cannot agree on a price, they shall select a third party who shall set the price.

Immediately following the effective date of termination, Dealer shall furnish Cadillac with a list of vehicle identification numbers of, and such other information as Cadillac may require pertaining to, the motor vehicles to be purchased from Dealer under this Section 21. Dealer will deliver all such motor vehicles to Cadillac in accordance with Cadillac's instructions.

Within not more than thirty (30) days following the date of termination, Dealer shall mail or deliver to Cadillac (i) lists of parts, accessories and service supplies, on forms furnished by Cadillac and (ii) a list of special tools and signs to be purchased by Cadillac under this Section 21. Dealer shall retain possession of all such items until receipt from Cadillac of shipping instructions. Within ninety (90) days thereafter Dealer shall make delivery of such items, transportation charges prepaid, to such destinations(s) as Cadillac may direct.

Dealer shall take such action and shall execute and deliver such instruments as may be necessary (a) to convey good marketable title to all such property to Cadillac, (b) to comply with the requirements of any applicable state law relating to bulk sales or transfers and (c) to satisfy and discharge any liens or encum-

branches on said property prior to delivery thereof to Cadillac.

Cadillac shall pay Dealer for the property purchased by it under the provisions of this Section 21 as soon as practicable following delivery of such items to Cadillac, provided, however, that any payment for such property may be made by Cadillac, at its option, directly to any financing institution or other person or concern which shall have a security or ownership interest therein.

Cadillac may deduct from the purchase price of any property purchased by it under the provisions of this Section 21 any indebtedness of Dealer to Cadillac.

22. Loss of Premises

A. Premises Owned by Dealer

(1) Terminations to Which Applicable

The provisions of this subsection A shall be applicable only in the event Cadillac terminates this Agreement (i) under the provisions of subsection B(1) of Section 18 hereof because of Cadillac's failure to secure or maintain any required license or renewal thereof, (ii) under the provisions of subsection B(2) or C of Section 18 hereof or (iii) because of the incapacity for reasons of health of any person named in Paragraph THIRD of this Agreement.

(2) Premises to Which Applicable

The provisions of this subsection A shall be applicable only to premises which, at the time Dealer first has knowledge that a termination on one of the bases specified in paragraph (1) of this subsection A would become effective, (a) are owned by Dealer and carried on Dealer's books and records as land and building as-

sets, (b) are not used or occupied in whole or in part for any business purposes other than (i) the performance of Dealer's obligations under this Agreement or (ii) the performance of Dealer's obligations under this Agreement and one of more other dealer or distributor Agreements with Chevrolet, Pontiac, Oldsmobile, Buick or GMC Truck & Coach Divisions of General Motors Corporation, and such other dealer or distributor Agreements are terminated simultaneously with the termination of this Agreement, and (c) are described in the "Statement of Direct Dealership Premises" on file with Cadillac. Such premises are hereinafter referred to in this subsection A as "Dealer's premises".

(3) Cadillac's Obligations

To the end that the equities of Dealer will be protected and Dealer will not suffer a loss on Dealer's premises in relation to the fair market value thereof as of the time of termination, Cadillac will assist Dealer in the orderly disposition of Dealer's premises in accordance with and subject to the following provisions and conditions:

(a) Dealer shall, within thirty (30) days from the effective date of termination of this Agreement, file with Cadillac a written application for assistance in the disposition of Dealer's premises in accordance with the provisions of this subsection A. Such written application shall contain a representation to Cadillac by Dealer and the person or persons named in Paragraph THIRD of this Agreement that it is the intention of Dealer and each such person to retire from the business of selling either new or used motor vehicles in the general selling area wherein Dealer operated under

this Selling Agreement. Cadillac shall be released from any and all obligations to Dealer under this subsection A if Dealer fails to file such written application within such thirty (30) day period.

(b) Following receipt of the written application required under subparagraph (a) above, Cadillac will endeavor to (i) locate a purchaser who will offer to purchase Dealer's premises at a fair and reasonable price, or (ii) locate a lessee who will offer to lease Dealer's premises for a reasonable term at a fair and reasonable rental. If Cadillac does not locate such a purchaser or lessee within a reasonable time, Cadillac will offer either to purchase Dealer's premises at a fair and reasonable price or will offer to lease Dealer's premises for a reasonable term at a fair and reasonable rental.

(c) In establishing a fair and reasonable purchase price for Dealer's premises for the purpose of sale thereof to Cadillac or a reasonable rental for the purpose of lease thereof to Cadillac, Cadillac and Dealer will give consideration (i) to the adequacy of Dealer's premises for a Cadillac dealership operation and the length of time Dealer's premises have been used by Dealer in the performance of this Agreement or any other dealer or distributor Selling Agreement and (ii) to the fair appraised market value of Dealer's premises or the fair and reasonable monthly rental rate for Dealer's premises, as the case may be, as determined by the average of the appraisals of three qualified real estate appraisers, of whom Dealer and Cadillac shall each select the third. Based on these considerations, Dealer and Cadillac shall agree upon a fair and

reasonable purchase price and a fair and reasonable rental for Dealer's premises.

(d) Upon receipt of a bona fide offer from a prospective purchaser to purchase Dealer's premises at a fair and reasonable price Dealer will sell Dealer's premises to such prospective purchaser, or upon receipt of a bona fide offer from a prospective lessee to lease Dealer's premises at a fair and reasonable rental for a reasonable term Dealer will lease Dealer's premises to such prospective lessee. The failure of Dealer to accept such a bona fide offer from a prospective purchaser or from a prospective lessee shall constitute a complete release of Cadillac from any obligation to purchase or lease Dealer's premises and from any other obligation under this subsection A.

(e) If Dealer's premises are also used by Dealer in the performance of Dealer's obligations under one or more dealer or distributor Agreements with Chevrolet, Pontiac, Oldsmobile, Buick and GMC Truck & Coach Divisions of General Motors Corporation, which are terminated simultaneously with the termination of this Agreement, such other Division or Divisions of General Motors Corporation will arrange with Cadillac as to which Division will assist Dealer in the disposition of Dealer's premises under this subsection A and Dealer will be so notified in writing.

B. Premises Leased by Dealer

(1) Terminations to Which Applicable

The provisions of this subsection B shall be applicable only in the event Cadillac terminates this Agreement

(i) under the provisions of subsection B(1) of Section 18 hereof because of Cadillac's failure to secure or maintain any required license or renewal thereof or (ii) under the provisions of subsections B(2), B(3) or C of Section 18 hereof.

(2) Premises to Which Applicable

The provisions of this subsection B shall be applicable only to premises which, at the time Dealer first has knowledge that a termination on one of the bases specified in paragraph (1) of this subsection B would become effective, (a) are leased by Dealer under a written lease for a term continuing beyond the effective date of such termination, (b) are not used or occupied in whole or in part for any business purpose other than (i) the performance of Dealer's obligations under this Agreement or (ii) the performance of Dealer's obligations under this Agreement and one or more other dealer or distributor Agreements with Chevrolet, Pontiac, Oldsmobile, Buick or GMC Truck & Coach Divisions of General Motors Corporation, and such other dealer or distributor Agreements are terminated simultaneously with the termination of this Agreement, and (c) are described in the "Statement of Direct Dealership Premises" on file with Cadillac. Such premises are hereinafter referred to in this subsection B as the "leased premises" and, if the leased premises are covered by more than one lease, the words "lease" and "lessor", as used in this subsection B, shall be deemed to include the plural thereof.

(3) Cadillac's Obligations

To the end that the equities of Dealer will be protected and the normal losses incident to the liquidation

of Dealer's business will be minimized, Cadillac will assist Dealer in the liquidation of Dealer's obligations under any existing lease of the leased premises in accordance with and subject to the following provisions and conditions:

(a) Dealer shall, within thirty (30) days from the effective date of termination of this Agreement, file with Cadillac a written application for assistance in the liquidation of Dealer's obligations under any lease of the leased premises in accordance with the provisions of this subsection B. Such written application shall contain a written representation to Cadillac by Dealer and the person or persons named in Paragraph third of this Agreement that it is the intention of Dealer and each such person to retire from the business of selling either new or used motor vehicles in the general selling area wherein Dealer operated under this Agreement. Cadillac shall be released from any and all obligations to Dealer under this subsection B if Dealer fails to file such written application within such thirty (30) day period.

(b) Following receipt of the written application required under subparagraph (a) above, Cadillac will endeavor to (i) locate a tenant or tenants, satisfactory to the lessor of the leased premises, who will offer to sublet the premises for the balance of the term of the lease or who will take an assignment or assignments and assume the obligations of such lease, or (ii) effect arrangements satisfactory to Cadillac and the lessor of the leased premises whereby the lease with Dealer will be cancelled, or (iii) sublet the premises from Dealer

if the unexpired term of the lease shall not be in excess of twelve (12) months from the effective date of termination of this Agreement. In the event Cadillac does not locate a sublessee or assignee or arrange for the cancellation of Dealer's lease or sublet the premises, as provided above, Cadillac will pay Dealer as reimbursement to Dealer, at Cadillac's option, either (1) a fair monthly rental as of the date of termination, as determined by the average of the appraisals of three qualified real estate appraisers, of whom Dealer and Cadillac shall each select one and the two thus selected shall in turn select the third, or (2) the rental specified in the lease. Such payments shall cover reimbursement for rental for a maximum period of twelve (12) months immediately following the effective date of termination or the balance of the term of the lease, whichever shall be lesser. If Dealer's obligations under the existing lease are not otherwise liquidated and Dealer is entitled to reimbursement from Cadillac under the provisions hereof with respect to rentals paid by Dealer, Dealer must file its claim, supported by evidence satisfactory to Cadillac, for such reimbursement within two (2) months after the expiration of the period covered by such claim.

(c) If the leased premises or any part thereof are occupied by Dealer or by anyone else for business or any other purpose after a period of one (1) month immediately following the effective date of termination, Cadillac will be discharged from its obligation hereunder to reimburse Dealer for rental paid by Dealer as aforesaid with respect to any

month during any part of which the premises or any part thereof are so occupied; provided, however, that where the dealership premises consist of more than one parcel of property or more than one building, each of which is separately unable, distinct and apart from the whole premises or any other part thereof, with appropriate ingress or egress, each such parcel or building may be considered separately for the purposes of this paragraph 3(c) of this subsection B.

(d) If requested to do so by Cadillac, Dealer shall use its best efforts to effect a settlement of any lease covering the leased premises with the lessor named therein to the same extent as if Cadillac were not obligated to assist Dealer in the liquidation of Dealer's obligations under such lease, but any such settlement shall be approved by Cadillac before being finally accepted by Dealer. Any reduction in rental resulting from any such settlement shall proportionately reduce Cadillac's obligations under this subsection B.

(e) If the leased premises are also used by Dealer in the performance of Dealer's obligations under one or more dealer or distributor Agreements with Chevrolet, Pontiac, Oldsmobile, Buick or GMC Truck & Coach Divisions of General Motors Corporation, which are terminated simultaneously with the termination of this Agreement, such other Division or Divisions of General Motors Corporation will arrange with Cadillac as to which Division will assume the obligations to Dealer under this subsection B and Dealer will be so notified in writing.

(f) Upon receipt of a bona fide offer from a prospective tenant or tenants satisfactory to the lessor of the leased premises, Dealer will sublet the leased premises or assign the lease thereon to such prospective tenant or tenants. In the event Cadillac arranges a cancellation of such lease without cost to Dealer, Dealer will execute a cancellation agreement with the lessor of the leased premises. The failure of Dealer to sublet the leased premises, to assign the lease, to execute a cancellation agreement with the lessor of the leased premises or to use its best efforts, if requested, to effect a settlement, all as provided in this subsection B, shall constitute a complete release of Cadillac from any further obligations under this subsection B.

(g) Dealer shall permit Cadillac to examine and audit Dealer's books and records insofar as may be necessary to verify claims filed by Dealer under this subsection B.

(h) If Dealer is a proprietorship, the term "Dealer" as used in this subsection B shall be interpreted to include Dealer's executor(s), administrator(s) or representative(s) in the event this Selling Agreement is terminated in accordance with the provisions of subsection B(3) of Section 18 hereof.

C. Negotiations

The provisions of subsections A and B of this Section 22 dealing as they do with situations as they will arise in the future must of necessity be stated in broad terms, and to accomplish the fair and equitable results

intended all negotiations and transactions contemplated by such subsections will be carried on in the utmost of good faith on the respective parts of both Dealer and Cadillac.

D. Termination Due to Death of Dealer

If this Agreement is terminated due to the death of Dealer or any person named in Paragraph THIRD hereof, Cadillac, if requested to do so, and without assuming any legal obligations or liability with respect thereto, will render assistance to the representatives of the estate of Dealer if the deceased person is Dealer, or to Dealer if the deceased person is not Dealer, in locating a purchaser or lessee for any premises owned by Dealer and used in the performance of Dealer's obligations under this Agreement at the time of said termination.

GENERAL PROVISIONS

23. Dealer Not Made Agent or Legal Representative of Cadillac

This Agreement, of which these Terms and Conditions are a part, does not constitute Dealer the agent or legal representative of Cadillac for any purpose whatsoever. Dealer is not granted any express or implied right or authority to assume or to create any obligation or responsibility in behalf of or in the name of Cadillac or to bind Cadillac in any manner or thing whatsoever.

24. Responsibility for Dealer's Commitments

Except insofar as it is specifically provided otherwise in this Agreement, Dealer shall be solely responsible

for any and all obligations or responsibilities incurred or assumed by Dealer in the performance of this Agreement.

25. Local Taxes

Dealer hereby certifies that all motor vehicles, parts, accessories and items similar thereto purchased from Cadillac are for resale in the course of Dealer's business. Dealer further certifies that Dealer has obtained any license required to collect sales or use taxes incurred in any such resale transactions, and that the number, if any, of such license has been or will be furnished to Cadillac. Dealer agrees, as to any such motor vehicles, parts, accessories or items similar thereto which are withdrawn from stock and put to a taxable use in lieu of or prior to resale, and as to any tangible property which Dealer purchases for use and not for resale, to pay directly to the appropriate taxing authority any sales, use or similar taxes incurred by such use or purchase, to file any tax returns required in connection therewith, and to hold Cadillac harmless from any claims or demands made by such taxing authority with respect thereto.

26. Notices

Any notice required to be given by either party to the other under or in connection with this Agreement shall be in writing and delivered personally or by mail. Notices to Dealers shall be directed to Dealer, or its representative at Dealer's place of business. Notices to Cadillac shall be directed to the General Sales Manager at Cadillac Motor Car Division, General Motors Corporation, Detroit, Michigan, unless Dealer is operating under a Cadillac Factory Branch or Zone Office, in which event notices to Cadillac shall be directed to the

Branch Manager or Zone Manager of Cadillac Motor Car Division, General Motors Corporation, at the location of the Branch or Zone Office, under which Dealer is operating.

27. No Implied Waivers

The failure of either party at any time to require performance by the other party of any provision hereof shall in no way affect the full right to require such performance at any time thereafter. Nor shall the waiver by either party of a breach of any provision hereof constitute a waiver of any succeeding breach of the same or any other such provision nor constitute a waiver of the provision itself.

28. Applicable Law

This Agreement is to be governed by and construed according to the laws of the State of Michigan. If, however, any provision in anywise contravenes the laws of any state or jurisdiction where this Agreement is to be performed, such provision shall be deemed not to be a part of this Agreement therein.

29. Assignment

Dealer shall not transfer or assign nor attempt to transfer or assign this Agreement or any right or obligation hereunder without the prior written consent of Cadillac executed by the General Manager or the General Sales Manager of Cadillac.

30. Sole Agreement of Parties

There are no other agreements or understandings, either oral or in writing, between the parties affecting this

Agreement or relating to the sale or servicing of Cadillac motor vehicles, parts or accessories, except as otherwise specifically provided herein.

This Agreement cancels and supersedes all previous agreements between the parties.

No change in, addition to (except the filling in of blank lines) or erasure of any printed portion of this Agreement shall be valid or binding upon Cadillac unless the same is approved in writing by the General Manager or the General Sales Manager of Cadillac.

No agreement between the parties which is at variance with any of the provisions of this Agreement or which imposes definite obligations upon either party not specifically imposed by this Agreement or which is intended to be effective or performed following the termination of this Agreement and imposes obligations or extends the time for performance thereof other than as provided in this Agreement shall be binding upon either party unless it bears the signature of the General Manager or the General Sales Manager of the Cadillac Motor Car Division—General Motors Corporation and is executed or accepted by Dealer, or unless it bears the facsimile signature of the General Sales Manager, and, except for Direct Dealer Price Lists, is countersigned by an Assistant General Sales Manager, a Branch Manager or a Zone Manager of the Cadillac Motor Car Division—General Motors Corporation and is executed or accepted by Dealer.

Form No. T-5315B—Cadillac—60

U.S.A. 2500 8-60

2500 Rev. 7-62

CADILLAC MOTOR CAR DIVISION
GENERAL MOTORS CORPORATION

Direct Dealer
Selling Agreement

AGREEMENT, effective the day of
....., 19....., by and between Cadillac Motor
Car Division—General Motors Corporation, hereinafter
called Cadillac, and

.....
an individual)
a co-partnership) of
a corporation) City County State
hereinafter called Dealer.

GENERAL PURPOSE OF THIS AGREEMENT

The purpose of this Selling Agreement is to set forth the functions and responsibilities of the parties in the sale by Cadillac to Dealer of the motor vehicles, chassis, parts and accessories covered by this Agreement and the resale of those products by Dealer to its customers.

Both Cadillac and Dealer recognize that the mutually beneficial sale of Cadillac products and the efficient and safe operation of Cadillac motor vehicles are dependent upon the maintenance of the highest standards of manufacture by Cadillac and the highest standards of sales and service performance by Dealer.

Cadillac has elected to enter into this Selling Agreement with Dealer in reliance upon the ability of Dealer to meet and perform the operating requirements here-

of and in reliance upon the personal qualifications and business ability of the person or persons who are named in Paragraph THIRD hereof. Cadillac expects of Dealer, and Dealer in executing this Agreement acknowledges, that Dealer will actively, aggressively and honestly promote the sale of the motor vehicles, chassis, parts and accessories covered by this Agreement to customers in the area of sales responsibility described in Paragraph FIRST hereof and will give to the public prompt, efficient and courteous service; and that Dealer will conduct its business in a manner which will reflect favorably upon Dealer and its operations, Cadillac and Cadillac products and which will preserve the good will of Dealer and its operations and Cadillac, as well as the product good will which has been created by the manufacture of Cadillac motor vehicles, chassis, parts and accessories of the highest quality and design.

Dealer has elected to enter into this Selling Agreement with Cadillac because of its knowledge of the Cadillac reputation for integrity and fair business practices and of the customer acceptance of Cadillac products. Dealer expects of Cadillac, and Cadillac acknowledges, that Cadillac will produce and provide, at fair and competitive prices, motor vehicles and chassis, parts and accessories, which are saleable in Dealer's area of sales responsibility and which are of a quality and design that under normal conditions and when properly adjusted and maintained will give good performance for their owners; that, insofar as possible, Cadillac will make such products available in quantities to meet Dealer's reasonable requirements in Dealer's area of sales responsibility; that Cadillac will assist in creating a demand for such products by advertising in various

advertising media; and that Cadillac will assist Dealer in the sale of such products by making available to Dealer sales assistance and advice, advertising materials and campaigns, and instructions in sales and business methods.

IN CONSIDERATION of the foregoing and of the promises hereinafter made by the parties to each other, it is agreed as follows:

FIRST: Subject to the terms and conditions hereof, Cadillac will sell and Dealer will buy Cadillac motor vehicles with Dealer having the obligation to develop properly the sale thereof at retail particularly in the following area:

SECOND: The terms and conditions set forth in the attached "Terms and Conditions—Direct Dealer", bearing Form No. T-5316—Cadillac-60 are hereby made a part of this Agreement with the same force and effect as if set forth at length herein.

THIRD: This Agreement is a personal service contract, and is entered into by Cadillac with Dealer in reliance upon and in consideration of the personal qualifications of and representations with respect thereto of the following named person or persons who, it is agreed, will substantially participate in the ownership of Dealer and/or will actively participate in the operation of Dealer's Cadillac dealership:

Name	Participating in Ownership	Participating in Operation
.....	<input type="checkbox"/>	<input type="checkbox"/>
.....	<input type="checkbox"/>	<input type="checkbox"/>
.....	<input type="checkbox"/>	<input type="checkbox"/>

For the purposes of this Agreement the person or persons designated above shall be responsible for any act or omission of any of Dealer's agents or employees which may be contrary to the purposes and objectives of this Agreement or to any provision of this Agreement.

Concurrently with the execution of this Agreement, Cadillac has endorsed its approval of the ownership, financial interest and active management of Dealers as represented by Dealer on a "Direct Dealer Statement of Ownership, Financial Interests and Active Management" form supplied by Cadillac. No change in such ownership, financial interests or active management of Dealer shall be made without the prior written approval of Cadillac. Any such approved change shall be evidenced by the execution of a revised "Direct Dealer Statement of Ownership, Financial Interests and Active Management".

FOURTH: This Agreement shall continue in force and govern all relations and transactions between the parties for a term commencing on the stated date of execution hereof and expiring At the end of the stipulated term, this Agreement shall automatically terminate without notice or action on the part of either party unless sooner terminated as hereinafter provided in Section 18.

In the event a new and superseding form of Cadillac Dealer Selling Agreement is offered to Cadillac direct dealers generally effective November 1, 1965, Cadillac may terminate this Agreement by prior written notice to Dealer, provided that, at the same time, Cadillac offers Dealer such new and superseding form of Selling

Agreement for a period of not less than the then unexpired term of this Agreement.

FIFTH: This Agreement is not valid until and unless it bears the signature or facsimile signature of the General Sales Manager and is countersigned by an Assistant General Sales Manager, a Branch Manager or a Zone Manager of the Cadillac Motor Car Division—General Motors Corporation.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in triplicate as of the day and year first above written.

CADILLAC MOTOR CAR DIVISION
General Motors Corporation

[ILLEGIBLE]

General Sales Manager

By
Manager

Dealer
Firm Name

By
Officer of Firm and Title

By
Officer of Firm and Title

Town and State

Witness:

(If executed by a representative of Dealer, title such as President, Partner, etc., must be indicated.)

If Dealer is a corporation, show State in which incorporated:

Witness:

CADILLAC MOTOR CAR DIVISION
GENERAL MOTORS CORPORATION

SUPPLEMENT

To Direct Dealer Selling Agreement

THIS SUPPLEMENTAL AGREEMENT, effective the day of, 196..., by and between Cadillac Motor Car Division-General Motors Corporation, hereinafter called "Cadillac", and

.....
an individual)
a co-partnership) of
a corporation) City County State
hereinafter called "Dealer",

WITNESSETH:

WHEREAS, Cadillac and Dealer have entered into a Direct Dealer Selling Agreement, hereinafter referred to as the "Selling Agreement", effective as of the effective date of this Supplemental Agreement; and

WHEREAS, Cadillac and Dealer desire to amend the provisions of the Selling Agreement relating to current model price reduction, model change, and model change at reduced list price allowances, to warranties on motor vehicles, to warranty adjustments and to policies on adjustments to correspond to those currently set forth in the Cadillac Direct Dealer Selling Agreements with other authorized Cadillac dealers;

NOW, THEREFORE, in consideration of the mutual agreement of the parties thereto, it is agreed as follows:

1. Subsections G, H, I and K of Section 3 are hereby deleted in their entirety and there are substituted

therefor new subsections G, H, I and K of Section 3 of the Selling Agreement reading as follows:

"G. Current Model Price Reduction Allowances

"If Cadillac reduces the list price on any of its current models or body types of motor vehicles, Cadillac will refund or credit as an allowance to Dealer for each new and unused Cadillac motor vehicle of that model or body type, which on the effective date of such reduction is in Dealer's stock unsold, an amount equal to the difference between Cadillac's list price, less the applicable dealer base discount thereon, for such motor vehicle prior to the effective date of such reduction and Cadillac's list price, less the applicable dealer base discount thereon, for such motor vehicle after the effective date of such reduction.

"A Cadillac motor vehicle owned by Dealer and used by Dealer for demonstration purposes only shall be eligible for the same allowance as a new and unused Cadillac motor vehicle under this subsection G, provided it was new and unused at the time it was placed in demonstration service.

"H. Model Change Allowances

"In the event that Cadillac, at the time of an annual model change, shall discontinue a current model and body type of motor vehicle (hereinafter called "discontinued model motor vehicle") and substitute in place thereof a new model and body type identified by a new model year designation, Cadillac will make an allowance to Dealer on each new and unused discontinued model motor vehicle which is in Dealer's stock unsold on the day (hereinafter called the "Announcement Day") on

which the new model and body type is officially announced by Cadillac to the general public (local previewing announcements excepted) or on a day prior thereto designated by Cadillac.

"If Cadillac elects to designate a day prior to Announcement Day, Cadillac will make the same allowance with respect to each new and unused discontinued model motor vehicle which is purchased by Dealer from Cadillac between said designated day and the Announcement Day.

"A discontinued model motor vehicle owned by Dealer and used by Dealer for demonstration purposes only shall be eligible for the same allowance as a new and unused discontinued model motor vehicle under this subsection H, provided it was new and unused at the time it was placed in demonstration service.

"The amount of such allowance and the time of payment shall be determined by Cadillac. Such allowance, however, shall in no case be less than five per cent (5%) of the list price of each such discontinued model motor vehicle.

"I. Model Change at Reduced List Price Allowances

"If, at the time of an annual model change, the list price of the new model and body type is lower than the list price of the corresponding discontinued model and body type, Cadillac will refund or credit as an allowance to Dealer, for each new and unused Cadillac motor vehicle of the discontinued model and body type, which is in Dealer's stock unsold on the Announcement Day, an amount equal to the difference between Cadillac's list price, less the applicable dealer base discount thereon, for such motor vehicle and Cadillac's list price, less the

applicable dealer base discount thereon, for the corresponding motor vehicle of the new model and body type.

"A Cadillac motor vehicle of the discontinued model and body type owned by Dealer and used by Dealer for demonstration purposes only shall be eligible for the same allowance as a new and unused Cadillac motor vehicle under this subsection I, provided it was new and unused at the time it was placed in demonstration service.

"Cadillac shall not be required to make any refund or credit to Dealer under this subsection I if the new models and body types are so changed in size, design and price as, for all practical purposes, to make such new models and body types a new and different series or line of motor vehicles. In the latter event, Cadillac will make such refund or allowance as shall, in its opinion, be equitable under the circumstances.

"Dealer will be entitled to receive the allowances provided under this subsection I in addition to the model change allowance to which Dealer is entitled under subsection H hereof.

* * * * *

"K. Warranty on New Motor Vehicles

"There are no warranties, expressed or implied, made by Cadillac on Cadillac motor vehicles and chassis furnished hereunder except the following 'Manufacturer's' New Vehicle Warranty:

"Cadillac Motor Car Division of General Motors Corporation, as Manufacturer, warrants each new motor vehicle and chassis including all equipment and accessories thereon (except tires and tubes), manufactured or supplied by Cadillac Motor Car Division

and delivered to the original retail purchaser by an authorized Cadillac Dealer, to be free from defects in material and workmanship under normal use and service; Cadillac Motor Car Division's obligation under this warranty being limited to repairing or replacing at its option any part or parts thereof which shall, within twenty-four (24) months after delivery of such vehicle or chassis to the original retail purchaser or before such vehicle or chassis has been driven twenty-four thousand (24,000) miles, whichever event shall first occur, be returned to an authorized Cadillac Dealer at such Dealer's place of business and which examination shall disclose to Manufacturer's satisfaction to have been thus defective. The repair or replacement of defective parts under this warranty will be made by such Dealer without charge for parts, and if made at such Dealer's place of business, without charge for labor.

"The provisions of this warranty shall not apply to any Cadillac motor vehicle or chassis which has been subject to misuse, negligence or accident, or which shall have been repaired or altered outside of an authorized Cadillac dealership in any way so as, in the judgment of Manufacturer, to affect adversely its performance and reliability, nor to normal maintenance services (such as engine tune up, fuel system cleaning and wheel, brake and clutch adjustments) and the replacement of service items (such as spark plugs, ignition points, filters and brake and clutch lining) made in connection with such services, nor to normal deterioration of soft trim and appearance items due to wear and exposure.

"This warranty is expressly in lieu of any other warranties, expressed or implied, including any implied warranty of merchantability or fitness for a particular

purpose, and of any other obligations or liability on the part of the Manufacturer, and Cadillac Motor Car Division neither assumes nor authorizes any other person to assume for it any other liability in connection with such motor vehicle or chassis."

2. Subsection E of Section 4 of the Selling Agreement is hereby deleted in its entirety and there is substituted therefor a new subsection E of Section 4 of the Selling Agreement reading as follows:

"E. Return of Defective Parts and Accessories

"After notifying Cadillac and receiving specific instructions therefor from Cadillac, Dealer may return for credit defective parts and accessories purchased directly from Cadillac or acquired as the result of performing warranty adjustments, at the then current dealer net prices of such parts or accessories plus twenty per cent (20%). Such parts and accessories shall be packaged or created and shipped, transportation charges prepaid. Dealer will be reimbursed for transportation charges prepaid by Dealer on authorized shipments of defective parts and accessories."

3. Subsection D of Section 14 of the Selling Agreement is hereby deleted in its entirety and there is substituted therefor a new subsection D of Section 14 of the Selling Agreement reading as follows:

"D. Warranty Adjustments

"Dealer will deliver a copy of the 'Manufacturer's' new vehicle warranty to each purchaser of a new Cadillac motor vehicle and chassis, and Dealer will perform warranty adjustments for owners of Cadillac motor vehicles and chassis thereunder in accordance with the provi-

sions of the 'Cadillac Policies on Adjustments'. For such warranty work, and for any other policy or warranty work performed by Dealer with Cadillac's approval, Cadillac will reimburse Dealer as follows:

Parts: For any defective part or parts Cadillac will pay or credit Dealer an amount equal to the then current dealer net price of such part or parts plus twenty per cent (20%).

Labor: Cadillac will pay or credit Dealer on the basis of the Cadillac Flat Rate System of time allotments as recommended and furnished by Cadillac for labor performed by Dealer in the repair or replacement of any defective part or parts, at one hundred per cent (100%) of the labor rates related thereto as agreed upon with Cadillac."

4. Subsection E of Section 14 of the Selling Agreement is hereby deleted in its entirety and there is substituted therefor a new subsection E of Section 14 of the Selling Agreement reading as follows:

"E. Cadillac Policies on Adjustments

"Dealer will comply with 'Cadillac Policies on Adjustments', as set out in the 'Cadillac Service Policies and Procedures Manual', established by Cadillac to foster and retain owner good will toward Cadillac, Cadillac Dealers and Cadillac motor vehicles, parts and accessories. Such policies are reviewed periodically by Cadillac to assure the handling of adjustments properly and efficiently to secure the maximum benefits to be derived therefrom. Accordingly, Cadillac reserves the right at any time to change or modify the provisions of the 'Cadillac Policies on Adjustments', such changes or modifications to become effective upon notice thereof to Dealer."

5. Except as hereinabove provided, the terms and conditions of the Selling Agreement, as hereby amended, shall be and remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Supplemental Agreement in triplicate as of the day and year first above written.

DEALER

.....
Firm Name

By
Officer of Firm and Title

By
Officer of Firm and Title

WITNESS:
CADILLAC MOTOR CAR DIVISION
General Motors Corporation

/s/ By
General Sales Manager

By
..... Manager

Admitted in Evidence 2-23-66.

GENERAL COUNSEL'S EXHIBIT No. 9.
CADILLAC MOTOR CAR DIVISION

General Motors Corporation
Detroit, Michigan 48232

February 18, 1966

An examination of our records reflects the following information as of May 31, 1965.

List of Service Supervisory Employes of Cadillac Motor Car Division, Los Angeles Branch, Los Angeles, California.

<u>Name</u>	<u>Title</u>	<u>Location</u>
W. F. Baesman 7669 Shadyoak Drive Downey, California	Service Manager	5151 Wilshire
G. H. Harlan 14109 Cardinal Lane Houston, Texas	Service Manager	1076 West 7th St.
C. R. Moller	General Foreman Service	1076 West 7th St.
H. F. Vaughan	Foreman Service	1076 West 7th St.
B. L. Holderman	Foreman Service	1076 West 7th St.
L. E. Dickerson	Foreman Service	1076 West 7th St.
P. J. Michool	Foreman Service	1076 West 7th St.
L. E. Bolstad	Foreman Service	1076 West 7th St.
R. C. Henderson	Foreman Service	1076 West 7th St.
G. A. Hansen	Foreman Service	1076 West 7th St.
E. G. Graham	Foreman Service	5151 Wilshire
J. P. Edgar	Foreman Service	5151 Wilshire
E. Morris	Foreman Service	5151 Wilshire

/s/ JOSEPH G. PAIS

Joseph G. Pais

Assistant Personnel Director

Cadillac Motor Car Division

General Motors Corporation

Admitted in Evidence 2-23-66.

GENERAL COUNSEL'S EXHIBIT No. 10.
CADILLAC MOTOR CAR DIVISION

General Motors Corporation

Detroit, Michigan 48232

February 18, 1966

An examination of our records reflects the following information as of May 31, 1965.

List of hourly-rate employes of the Cadillac Motor Car Division, Los Angeles Branch, at 5151 Wilshire Avenue, Los Angeles, California.

<u>Name</u>	<u>Classification</u>	
Scarborough, Harry	Mechanic	
Segal, David	Mechanic	Retired
Danzilio, James	Mechanic	
Baird, Gordon	Mechanic	Retired
Sarama, John	Mechanic	Retired
McFall, Earl	Mechanic	
Peterson, Robert G.	Mechanic	
Henry, Clayton	Mechanic	
Wilson, Lawrence	Mechanic	
Nelson, Donald	Mechanic	
Conrad, Dean	Mechanic	
Falchi, Pete	Mechanic	
Marchione, Domenico	Mechanic	
Holland, Floyd	Mechanic	
Davis, John	Mechanic	
Sullivan, Michael	Mechanic	
Garcia, Jacob J.	Mechanic	
McMurtry, John	Painter	
Morfin, Andrew	Painter	
Barson, Harry	Painter	Retired
Steiner, Edward	Metal-Man	Retired
Haggard, Hubert	Metal-Man	Retired
Grillo, Eugene	Metal-Man	
Gallaway, William	Metal-Man	
Smith, George	Garage Attendant	Retired
Sutherland, Robert	Garage Attendant	Retired
Hamilton, Willie	Garage Attendant	
Harris, George	Garage Attendant	
Crowe, Berrie	Garage Attendant	
Birt, Ulysses	Garage Attendant	
Jackson, Floyd	Garage Attendant	
Haverly, Edward	Garage Attendant	
Griffin, Lonnie	Polisher	
Simmons, John	Polisher	Retired
Bailey, George	Polisher	
Hudson, Jack	Polisher	
Mosley, Edward	Polisher	
Burt, Joseph	Washer	
Harms, Fredrick	Lubricator	Retired
Calhoun, Francis	Lubricator	Retired
Cecil, Ronald	Lubricator	
Anderson, Arnie	Mechanic	

All of the above employes were placed on layoff status effective May 31, 1965, except as noted. All retirees were retired effective June 1, 1965.

/s/ JOSEPH G. PAIS
Joseph G. Pais
Assistant Personnel Director
Cadillac Motor Car Division
General Motors Corporation

Admitted in Evidence 2-23-66.

GENERAL COUNSEL'S EXHIBIT No. 11.
CADILLAC MOTOR CAR DIVISION

General Motors Corporation
Detroit, Michigan 48232

February 18, 1966

An examination of our records reflects the following information as of May 31, 1965.

List of hourly-rate employes of the Cadillac Motor Car Division, Los Angeles Branch, at 1076 West 7th Street, Los Angeles, California.

<u>Name</u>	<u>Classification</u>	
Herrin, George	Mechanic	Retired
Doherty, Malcolm	Mechanic	
Hurley, Robert	Mechanic	
Sherman, James	Mechanic	Retired
Hill, Reginald	Mechanic	Retired
Ehrig, Bernard	Mechanic	
Worth, Robert	Mechanic	
Oshiro, Thomas	Mechanic	
Gonzalez, Hermenegildo	Mechanic	
Crookham, Cleo	Mechanic	
Ruiz, Harry	Mechanic	Retired
Craggett, Otis	Mechanic	
Brandt, Clarence	Mechanic	Retired

<u>Name</u>	<u>Classification</u>	
Gennaway, Joseph	Mechanic	
Highducheck, Frank	Mechanic	Sick Leave as of May 31, 1965
Hercka, Anthony	Mechanic	
Person, Ludwig	Mechanic	Retired
Ward, Elmer	Mechanic	
LeNear, Horace	Mechanic	
Dungan, Everet	Mechanic	
Dungan, William	Mechanic	
Peterson, Robert W.	Mechanic	
Brinkman, Gary	Mechanic	
Hurd, Howard	Mechanic	
Gonzalez, Javier	Mechanic	
Glover, Russell	Mechanic	
Schuller, Willie	Undersealer	
Rosteing, Don	Painter	
Lee, Edward	Painter	
Smith, Ray	Painter	Retired
DeAcetis, Alexander	Painter	
Frechette, Jean	Painter	
Garcia, Adolfo	Painter	
Miramontes, David	Lubricator	
Kerswill, Gerald	Lubricator	
Rymenams, Harry	Lubricator	
Jimenez, Joe	Trimmer	
Rodriguez, Robert	Metal-Man	
Wogee, Mitchell	Metal-Man	
Martin, John	Metal-Man	Retired
Hait, Jay	Metal-Man	
Perdew, James	Metal-Man	
Schaefer, Vincent	Metal-Man	
Lamison, Randolph	Polisher	Retired
Farris, Robert	Polisher	Retired
Wilson, Noble	Polisher	
Finch, Frank	Polisher	
Neely, James	Polisher	
Wright, Robert	Polisher	
Elder, Allen	Polisher	Will be retired May 1, 1966
Aquilar, Gilbert	Washer	
Hawkins, Walter	Washer	
Hamuza, John	Elevator Operator	
Burrell, Lucios	Maintenance	
Marino, Louis	Maintenance	
Holly, Willie	Garage Attendant	
Daniels, Alfred	Garage Attendant	

<u>Name</u>	<u>Classification</u>	
De La Cueva, Salvador	Garage Attendant	Retired
Harris, Charles	Garage Attendant	Retired
William, Milton	Garage Attendant	
Monestero, Ben	Garage Attendant	
Smith, L. C.	Garage Attendant	
Smith, Wilbert	Garage Attendant	
Pearson, Lester	Garage Attendant	Retired
Swenson, John	Garage Attendant	
Patlan, Gilbert	Garage Attendant	
Jackson, Joseph	Garage Attendant	
Utle, Leonard	Garage Attendant	
Payton, Berttran	Garage Attendant	
Washington, Arthur	Garage Attendant	
Stokes, Ray	Garage Attendant	
Byrd, Firdia	Garage Attendant	
Wright, Central	Garage Attendant	
Paredes, Edward	Garage Attendant	
Tillett, Roy	Garage Attendant	

All of the above employees were placed on layoff status effective May 31, 1965, except as noted. All retirees were retired effective June 1, 1965, except as noted.

/s/ JOSEPH G. PAIS

Joseph G. Pais

Assistant Personnel Director

Cadillac Motor Car Division

General Motors Corporation

Admitted in Evidence 2-23-66.

GENERAL COUNSEL'S EXHIBIT No. 12-A.

[Letterhead]

May 17, 1965

Cecil Thomas & Sons

1030 Pacific Coast Highway

Harbor City, California

Attention: La Rue Thomas

Re: Cadillac Motor Car Division

Dear Mr. Thomas:

This office represents Painters Union, Local 1798 and the firm of Richman, Garrett & Ansell represents the International Association of Machinists District Lodge 94 and its affiliated local lodges.

At the present time, the employees at the Wilshire branch of Cadillac Motor Car, Los Angeles Division, are represented by the above unions, and there is in effect a collective bargaining agreement between the above organizations and Cadillac Motor Car Division of General Motors Corporation, governing the wages, hours and working conditions of such employees.

We have been advised by Cadillac that your company will be assuming the operations at the Wilshire branch on June 1, 1965.

The employees at the Wilshire branch and the above unions are concerned that this change of ownership will not adversely effect them.

In view of the history of a high level of dealings and a friendly relationship with your business concern, it is assumed by the above unions that your company will recognize and bargain with the above unions.

In order to clarify the rights of the employees and above unions, and to deal with any questions that may arise on the part of all parties concerned, we are requesting a meeting at your very earliest convenience. This meeting should include a representative of your company, the Painters Union and myself, the Machinists Union and its attorney, Herb Ansell.

Please contact the undersigned at HUBbard 3-9630, or Mr. Herb Ansell at HUBbard 3-7400 regarding such meeting. A convenient time for the unions, Mr. Ansell and myself would be on Monday, May 24, at 10:00 AM. In view of the central location of this office, I suggest that the meeting be held here.

Thank you for your cooperation.

Very truly yours,

LEO GEFFNER

LG/jw

cc: Herb Ansell, Esquire

RICHMAN, GARRETT & ANSELL

1325 Wilshire Boulevard

Los Angeles 17, California

Mr. John Lazarra

846 South Union Avenue

Los Angeles, California 90017

Mr. Herbert Cooksey

IAM District Lodge 94

214 South Loma Drive

Los Angeles, California

Mr. Barney Hubert

IAM District Lodge 94

214 South Loma Drive

Los Angeles, California

Admitted in Evidence 2-23-66.

GENERAL COUNSEL'S EXHIBIT No. 12-B.

[Letterhead]

May 18, 1965

Cecil Thomas & Sons
1030 Pacific Coast Highway
Harbor City, California

Attention: La Rue Thomas

RE: Cadillac Motor Car Division

Dear Mr. Thomas:

In my letter of May 17, 1965, I mistakenly stated that your Company was taking over the operations of the Wilshire branch of Cadillac. This letter should be corrected to refer to the fact that your Company is taking over the operations at Seventh & Bixel.

It has come to the attention of Mr. John Lazzara, at Painters Local 1798, that the employees at the Cadillac Division have been requested to sign applications for employment on a form submitted by the Motor Car Dealers Association. It is not clear to us as to whether you had knowledge of this recent development or whether such applications were solicited with your approval. The solicitation of such application without a mutual agreement with the Painters Union constitutes a serious matter which should be resolved immediately. For this reason a meeting as I suggested in my letter of May 17, becomes an absolute necessity. Please confirm immediately whether you will meet on Monday, May 24. I have suggested 10:00 AM, however, I would like

to move this meeting up to 8:30 AM if that time is agreeable to you.

Very truly yours,

LEO GEFFNER

LG/jw

cc: Herb Ansell
John Lazarra
Herbert Cooksey
Barney Hubert

Admitted in Evidence 2-23-66.

GENERAL COUNSEL'S EXHIBIT No. 12-C.

[Letterhead]

June 8, 1965

Mr. La Rue Thomas
1076 West 7th Street
Los Angeles, California

Re: Cadillac Motor Car Division—7th &
Bixel

Dear Mr. Thomas:

On June 3, 1965 this office sent to Cecil Thomas & Sons, 1030 Pacific Coast Highway, Harbor City, California, to your attention, the enclosed letter. In this letter we requested that your company submit to arbitration the question of whether it was bound under the terms of any labor agreement with the Machinists and Painters Unions. I have not received any response from you or your representative since that time.

At this time I advise that if we have not heard from you within 3 days from date of this letter, we will assume this to constitute a refusal on your part to submit to arbitration and will then proceed accordingly with all appropriate legal action.

Yours truly,

RICHMAN, GARRETT & ANSELL

By

Herbert M. Ansell

Attorney for Machinists

District Lodge 94

LEVY, DeROY, GEFFNER,

KOSZDIN & GLOW

By

Leo Geffner

Attorney for Painters Union,

Local 1798

HMA :ml

Encl.

cc: H. A. Cooksey

Barney Hubert

Leo Geffner, Esq.

Admitted in Evidence 2-23-66.

GENERAL COUNSEL'S EXHIBIT No. 12-D.

[Letterhead]

June 9, 1965

Mr. La Rue Thomas

Cadillac Motor Cars

1076 West Seventh Street

Los Angeles, California

RE: Thomas Cadillac Agency

Dear Mr. Thomas:

Please be advised that this office represents Painters Union, Local 1798.

On behalf of Painters Union, Local 1798 we are alleging that Thomas Cadillac Agency is in violation of the existing Collective Bargaining Agreement between the Painters Union and Cadillac Motor Car Division, General Motors Corporation.

We are requesting that the issue of the application of the Agreement to Thomas Cadillac Agency be submitted to Arbitration in accordance with the Agreement. We are willing to waive the preliminary grievance steps and proceed directly to Arbitration.

Please advise us as to your position concerning this matter.

Very truly yours,

LEO GEFFNER

LG/kh

cc: John Lazzara
Painters Union, Local 1798
86 South Union Avenue
Los Angeles, California 90017

Herb Ansell, Esq.
1325 Wilshire Boulevard
Los Angeles, California 90017

Admitted in Evidence 2-23-66.

GENERAL COUNSEL'S EXHIBIT No. 13.

<u>NAME</u>	<u>DATE OF HIRE</u>	<u>CLASSIFICATION</u>
Ronald E. Autry	6-7-65	Attendant
Arthur Baker, Jr.	6-9-65	Maintenance
Daniel Batchelor	6-8-65	Polisher
Sidney I. Bell	6-7-65	Attendant
Willie S. Bell	6-2-65	Polisher
Theatris Bobby	6-7-65	Undersealer
Julian Bonner, Jr.	6-7-65	Attendant
Marcel Y. Bouchard	6-7-65	Mechanic
Gary L. Brinkman	6-7-65	Mechanic
Lucius E. Burrell	6-1-65	Maintenance
Alberto Cardenas	6-4-65	Polisher
Arthur P. Clayton	6-7-65	Mechanic
Cleo L. Crookham	6-7-65	Mechanic
James E. Daniels	6-7-65	Attendant
Earnest D. Dedeaux	6-9-65	Attendant
Malcolm B. Doherty	6-7-65	Mechanic
William E. Doutherd	6-7-65	Mechanic
Everet G. Dungan	6-7-65	Mechanic
William H. Dungan	6-7-65	Mechanic
Richard D. Easter	6-7-65	Attendant
Jean Roch Frechette	6-7-65	Painter
Leon E. Fuller	6-7-65	Washer
Dwight D. Glass	6-7-65	Lubricator
Jerry R. Hathaway	6-7-65	Mechanic
Forrest G. Hickman	6-7-65	Mechanic
Joseph Jackson	6-7-65	Freight Elevator Operator
Spencer L. Jackson	6-7-65	Metal-Man
Jose Jauregui	6-7-65	Attendant
Julius Jenkins	6-7-65	Attendant
Joe C. Jimenez	6-7-65	Trimmer
Raymond R. Jiron	6-7-65	Painter
Ollie Jones	6-7-65	Polisher
Robert R. Keller	6-7-65	Mechanic
William T. Larkins	6-7-65	Attendant
John J. Listo	6-7-65	Mechanic
Louis J. Marino	6-7-65	Elevator Operator— Passenger
John A. Martin	6-7-65	Metal-Man
Ben R. Monestero	6-9-65	Attendant
Ramon Morales	6-8-65	Painter
Richard R. Norman	6-7-65	Lubricator
Dominic Palumbo	6-7-65	Mechanic
George S. Payne	6-7-65	Freight Elevator Operator
James E. Perdew	6-7-65	Metal-Man
Richard P. Prior	6-7-65	Lubricator

<u>NAME</u>	<u>DATE OF HIRE</u>	<u>CLASSIFICATION</u>
Robert F. Reggie	6-7-65	Mechanic
Antonio Sanchez	6-7-65	Metal-Man
Jalal S. Saour	6-7-65	Mechanic
Willard H. Scroggins	6-2-65	Maintenance
Frederick A. Secord	6-7-65	Attendant
L. C. Smith	6-7-65	Attendant
Wilbert Smith	6-7-65	Attendant
Teodoro Torres	6-9-65	Mechanic
Edward Van De Mark	6-7-65	Mechanic
Elmer J. Ward	6-7-65	Mechanic
Green Willis	6-7-65	Attendant
Christopher C. Wimbish	6-8-65	Metal-Man
Ralph Wimbish	6-8-65	Metal-Man

Admitted in Evidence 2-23-66.

GENERAL COUNSEL'S EXHIBIT No. 14-A.

THIS AGREEMENT, made this 11th day of May, 1965, by and between GENERAL MOTORS CORPORATION (Cadillac Motor Car Division), hereinafter called "Seller", and LaRue C. Thomas, of San Pedro, California, hereinafter called "Buyer",

WITNESSETH:

WHEREAS, Seller has operated a Cadillac branch retail store for the sale of Cadillac motor vehicles, parts and accessories and the service of such motor vehicles at 1076 West Seventh Street, in Los Angeles, California, and desires to discontinue such operations as of May 31, 1965; and

WHEREAS, Buyer and Seller desire to effect a transfer to Buyer of certain of the assets and possession of the premises owned or used by Seller in such operations, so that Buyer may commence operations as an authorized Cadillac dealer thereat effective as of

the date and time fixed in Paragraph ELEVENTH of this Agreement for the closing of the transactions contemplated hereby (hereinafter called the Closing Date);

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, the parties hereto have agreed and do hereby agree as follows:

FIRST: Seller will discontinue all of the Cadillac retail sale and service operations currently conducted by it at the premises covered under Paragraph SECOND of this Agreement (hereinafter called Seller's Branch Operations), on or prior to the Closing Date and will execute with Buyer a Cadillac Direct Dealer Selling Agreement having a term of five (5) years, with such Selling Agreement to be subject to such conditions relating to the execution thereof by either party as may be agreed upon by Buyer and Seller.

SECOND: Commencing as of the Closing Date, Seller will lease and sublease, as the case may be, to Buyer, for use by Buyer in Buyer's operations as an authorized Cadillac dealer, the premises described in the form of Lease and Sublease attached hereto as Exhibits "A" and "B", respectively, with the definitive lease and Sublease to be executed by Seller and Buyer to contain the terms and provisions of such forms of Lease and Sublease, except for such changes in such terms and conditions as may be mutually agreed upon by Buyer and Seller prior to the execution of a definitive Lease and Sublease.

Possession of the premises covered by the Lease and Sublease to be executed by Buyer and Seller shall be delivered by Buyer to Seller on the Closing Date.

Buyer shall make available to Seller for a reasonable period following the Closing Date a reasonable amount of office space at the premises covered by the Lease and Sublease for use by representatives of Seller for the purpose of completing the closing and termination of Seller's operations thereat contemplated by this Agreement.

THIRD: Based on a physical inventory made as of or prior to the Closing Date, Buyer and Seller will agree upon a list of the items of leasehold improvements made by Seller at the premises described in the Lease or Sublease provided for in Paragraph SECOND of this Agreement. The cost of such leasehold improvements, if any, remaining unamortized by Seller upon its books as of the Closing Date shall be factored into the amount of rental payable by Buyer under the Lease and Sublease provided for in Paragraph SECOND of this Agreement, or such Lease and Sublease shall otherwise provide for reimbursement to Seller by Buyer of such unamortized amount.

FOURTH: Based on a physical inventory to be made by Buyer and Seller which shall be adjusted as of the Closing Date, Buyer will purchase from Seller all of Seller's right, title and interest to the following items of personal property located at or used by Seller in connection with Seller's Branch Operations:

A. Seller's fixed assets, including machinery and shop equipment, parts and accessory equipment, furniture and fixtures (including signs usable by Buyer) and service cars, but excluding leasehold improvements, except for any items of such fixed assets which Buyer may elect not to buy from Seller or Seller may elect not to sell to Buyer, at prices representing the

fair market value thereof to be established by Buyer and Seller prior to the Closing Date, or if Buyer and Seller cannot agree upon a price for any item of fixed assets, the price thereof, representing its fair market value, shall be established within ten (10) days after the Closing Date by an independent appraiser to be selected by agreement between Buyer and Seller.

B. Company cars, including cars used for demonstration purposes, and used cars used or acquired by Seller in connection with Seller's Branch Operations, at prices representing the fair wholesale market value thereof to be established by Buyer and Seller prior to the Closing Date, or if Buyer and Seller cannot agree on the price of any such car, the price thereof shall be established within ten (10) days after the Closing Date by an independent appraiser to be selected by agreement between Buyer and Seller.

C. All new and unused Cadillac motor vehicles and chassis of the current model on hand at Seller's Branch Operations, at the factory's list price therefor, less the applicable factory base discounts thereon and plus applicable factory destination charges and charges for special equipment thereon.

D. All unused and undamaged Cadillac parts listed in Cadillac's current Dealer Parts and Accessories Price Schedule, and on hand at Seller's Branch Operations, at the then current dealer prices therefor, exclusive of transportation charges.

E. All unused and undamaged Cadillac accessories acquired by Seller in connection with Seller's Branch Operations for use on current model Cadillac automobiles, at the then current dealer prices therefor, exclusive of transportation charges.

F. All other unused and undamaged Cadillac parts and accessories at a price representing the fair wholesale market value thereof to Buyer as established by Buyer and Seller prior to the Closing Date, or if Buyer and Seller cannot agree on the price to be paid for such parts and accessories, the price thereof shall be established within ten (10) days after the Closing Date by an independent appraiser to be selected by Buyer and Seller.

G. Special tools designed specifically for service of Cadillac motor vehicles and acquired by Seller for use at Seller's Branch Operations, at prices representing the fair market value thereof as established by Buyer and Seller prior to the Closing Date, or if Buyer and Seller cannot agree on the price to be paid for such special tools, the price thereof shall be established within ten (10) days after the Closing Date by an independent appraiser to be selected by agreement between Buyer and Seller.

H. Gas, oil and grease, new tires and tubes at the then current wholesale cost thereof.

I. Paint material on the basis of the physical inventory of full cans at the then current wholesale cost thereof, without charge for open cans.

J. Undercoating on the basis of a physical inventory of both full and open cans at the then current wholesale cost thereof.

K. Miscellaneous supplies and materials in Seller's inventory as of the Closing Date, expensed and used by Seller in connection with Seller's Branch Operations, at a price to be agreed upon by Buyer and Seller but not to exceed Seller's actual cost.

In addition to the purchase prices to be paid for the items of personal property described above in this Paragraph FOURTH, Buyer will assume the obligation for, or reimburse Seller for any payment made by Seller prior to the Closing Date of, the portion or portions of City, County and/or State personal property taxes applicable and allocable to said items of personal property for the period or periods following the Closing Date of any taxable year commencing on or before a date commencing thirty (30) days prior to the Closing Date.

Buyer will pay all sales and use taxes applicable to the purchase and use of the personal property being purchased hereunder.

Seller represents that from the date of this Agreement to the Closing Date, it will make purchases of the property described in this Paragraph FOURTH for use in Seller's Branch Operations only in the normal course of its business and that it will make no unusual purchases of this property during said period.

FIFTH: Seller hereby indemnifies Buyer against any and all claims of creditors of Seller which may be asserted against Buyer or the property described in Paragraph FOURTH hereof because of Buyer's or Seller's failure to comply with the provisions of the laws of the State of California relating to bulk sales.

SIXTH: Seller shall sell, assign and transfer to Buyer and the latter agrees to purchase and accept, as of the Closing Date, all of Seller's rights, title and interest in and to all trade accounts receivable on the books of Seller arising out of Seller's Branch Operations, at book value less a reasonable discount or reserve for losses or contingencies as determined by agreement of the parties on or before the Closing Date.

In connection with the sale and assignment of such accounts receivable, Seller represents that as of the Closing Date (a) it will have complete ownership of said items, (b) its books, records, accounts and documents recording said accounts and evidencing the transactions giving rise thereto will be correct and complete, (c) to its knowledge, no dispute, setoffs, counterclaims or contingencies will exist as to such items, except as disclosed in writing by Seller, and (d) adequate remedy will exist for the collection of said items and the enforcement of the rights of Seller with respect thereto.

SEVENTH: Seller shall sell, assign and transfer to Buyer as of the Closing Date all the right, title and interest of Seller in and to Sublet Repairs and Work-in-Process at Seller's Branch Operations. Seller shall bill Buyer, and Buyer agrees to pay Seller, for all such Sublet Repairs and Work-in-Process to the extent completed, less ten percent (10%).

EIGHTH: Prior to the Closing Date, Seller shall provide Buyer with a list of all unfilled retail orders for Cadillac cars accepted by Seller, showing the customer's name and address, the date of the order, the model and make ordered, and the amount deposited with or credited to the order, and shall assign to Buyer all unfilled retail orders described on such list.

On the Closing Date Seller shall pay to Buyer an amount representing the total of the amounts deposited with Seller for or credited to the listed retail orders, and Buyer shall thereupon undertake Seller's obligations under such orders, upon the terms and conditions specified therein.

Upon delivery of any car covered by any such retail order, Buyer agrees to pay the salesman's commission

arising out of the negotiation and acceptance of cash such retail order by Seller to the salesman of Seller, whether or not employed after the Closing Date by Buyer, who negotiated such retail order for Seller, such commission to be in an amount determined by Seller's agreement with such salesman at the time the retail order was negotiated. Seller shall provide Buyer with appropriate documentation identifying Seller's liability to each such salesman in connection with the negotiation of each such retail order. Buyer will indemnify Seller against liability for any such salesman's commissions becoming due and payable under such circumstances.

NINTH: Buyer agrees to assume and discharge all liabilities with respect to warranties on new cars and to assume responsibility for making policy adjustments on new cars delivered by Seller on or prior to the Closing Date in connection with Seller's Branch Operations.

TENTH: Seller represents that on the Closing Date, Seller will:

(a) Be the owner of all the property and rights to be sold, assigned or transferred under this Agreement free from any liens and encumbrances;

(b) Execute and deliver instruments satisfactory to Buyer conveying to Buyer all Seller's right, title and interest to the property and rights required to be sold or assigned under this Agreement;

(c) Execute and deliver to Buyer all such other instruments as may be required by the provisions of this Agreement in form satisfactory to Buyer;

(d) Terminate as of the Closing Date all utility agreements, insurance other than building insurance,

service contracts, memberships, subscriptions, etc., executed or acquired by Seller in connection with Seller's Branch Operations; and

(e) Discharge all Seller's obligations and liabilities to employees employed by Seller at Seller's Branch Operations for vacations, vacation pay, and pay in lieu of vacation accruing through the periods of employment expiring on the Closing Date.

ELEVENTH: The date, time and place for closing of the transactions contemplated by this Agreement shall be June 1, 1965, at 9 o'clock A. M. (Pacific Daylight Saving Time) at Los Angeles, California, or such other date, time or place as shall be agreed upon at any time in writing by Buyer and Seller. At the closing.

(a) Each party shall deliver to the other all of the documents herein stipulated to be delivered by each respective party and such other documents as may be reasonable requested by each party in accordance with the terms hereof, or as may be reasonably necessary to effectuate the intent and purposes of this Agreement; and

(b) Buyer will pay Seller or Seller will pay to Buyer, as the case may be, the aggregate of the net amount payable under this Agreement after deducting credits, offsets, and amounts payable by one party to the other under this Agreement.

TWELFTH: As of the close of business on the Closing Date, Seller will deliver to Buyer possession of the property to be sold, assigned or transferred under this Agreement. Buyer will operate for Buyer's own account as an authorized Cadillac dealer for the retail sales and service of Cadillac motor vehicles at the

premises now occupied by Seller for Seller's Branch Operations commencing on the Closing Date notwithstanding the fact that final adjustments under this Agreement may not be completed until a later date. Buyer will indemnify and hold Seller free and harmless from any loss or liability arising out of or in connection with any operations of Buyer at such location.

THIRTEENTH: Buyer may, at his option, assign and delegate all of Buyer's rights and obligations under this Agreement prior to the Closing Date to any partnership consisting of Buyer and other parties approved by Seller, or to any corporation, twenty-five percent (25%) or more of the capital stock ownership of which is held by Buyer as an individual and the remaining stockholders of which have been approved by Seller. However, this Agreement shall not be otherwise transferred or assigned by Buyer, except, however, that it may be assigned in the event of the death of Buyer prior to the Closing Date, but only to an assignee approved by Seller.

FOURTEENTH: This Agreement, and each of the rights and obligations of the parties under this Agreement, including the obligation of Seller to execute a Cadillac Direct Dealer Selling Agreement with Buyer, or any assignee of this Agreement, are hereby expressly declared to be contingent upon Buyer or any such assignee being in a position as of the Closing Date to meet (a) all of the operating requirements of a Cadillac Direct Dealer Selling Agreement for the dealer point at which it is contemplated that Buyer or such assignee will conduct authorized Cadillac dealership operations under such Selling Agreement, and (b) any other reasonable requirements normally imposed by Sell-

er for the conduct by an authorized Cadillac dealer of Cadillac dealership operations.

IN WITNESS WHEREOF, Buyer has executed this Agreement and Seller has caused this Agreement to be executed by its duly authorized representative as of the day and year first above written.

WITNESSED BY:

/s/ [Illegible]

/s/ [Illegible]

WITNESSED BY:

/s/ [Illegible]

/s/ [Illegible]

GENERAL MOTORS
CORPORATION

(Cadillac Motor Car Division) Seller

/s/ By F. T. HOPKINS,

F. T. Hopkins, Attorney-in-Fact

/s/ By LARUE C. THOMAS

LaRue C. Thomas, Buyer

Admitted in Evidence 2-24-66.

EXHIBIT A

THIS LEASE, made this day of A.D. 1965, between GENERAL MOTORS CORPORATION, a Delaware corporation (Cadillac Motor Car Division), with its principal office at 3044 West Grand Boulevard, Detroit, Michigan 48202, hereinafter called the Lessor, and

WITNESSETH:

The Lessor hereby lets to the Lessee, and the Lessee hires from the Lessor the buildings and improvements located on lands in the City and County of Los Angeles, State of California, described as:

PARCEL I

Lots "A", "B", "P" and the Northerly 20 feet of Lot "O" of Tract No. 54, in the City of Los Angeles, as per Map recorded in Book 13, Page 8 of Maps, in the Office of the County Recorder of said County.

PARCEL II

That portion of Lot 8 in Block 37 of Hancock's Survey in the City of Los Angeles, as per Map recorded in Book 2, Page 108 of Miscellaneous Records, in the Office of the County Recorder of said County, described as follows:

Beginning at the most Easterly corner of Tract No. 54, as per Map recorded in Book 13, Page 8 of Maps, in the Office of the said County Recorder; Thence Southwesterly along the Southeasterly line of said Tract No. 54, a distance of 210 feet to the Northeasterly line of the land described in Deed to Clare Schweitzer, recorded in Book 20835, Page 12, Official Records of said County; Thence Southeasterly along said Northeasterly line 46.50 feet; Thence Northeasterly parallel with the Southeasterly line of said Tract No. 54, a distance of 210 feet to the Southwesterly line of Seventh Street, 80 feet wide; Thence Northwesterly along said Southwesterly line 46.50 feet to the point of beginning.

PARCEL III

That portion of Lot 8, Block 37, Hancock's Survey, in the City of Los Angeles, as per Map recorded in Book 2, Page 108 of Miscellaneous Records, in the Office of the County Recorder of said County, described as follows:

Beginning at the Northwest corner of Lot "A", Tract No. 8036, as per Map recorded in Book 82 Page 50 of Maps, in the Office of the said County Recorder; Thence Northwesterly along the Southerly line of Seventh Street, 74.65 feet, more or less, to the Northeast corner of the land described in the Deed to Don Lee, Inc., recorded in Book 21216, Page 53 of Official Records; Thence Southwesterly along the Southeast line of said land so described 210 feet to the Northeast line of the land described in the Deed to Clare Schweitzer by Deed recorded in Book 20835, Page 12 of Official Records; Thence Southeasterly along said Northeasterly line to the Northwesterly line of said Lot "A", Tract No. 8036; Thence Northeasterly along said Northwesterly line 210 feet to the point of beginning.

EXCEPT THEREFROM that portion described as follows:

Beginning at the intersection of the Northwesterly line of Lot "A" of Tract No. 8036, as per Map recorded in Book 82 Page 50 of Maps, in the Office of the County Recorder of said County, with the Northeasterly line of the land described in Deed to Clare Schweitzer recorded in Book 20835 Page 12 of Official Records of said County; Thence Northeasterly along said Northwesterly

line of Lot "A", a distance of 60 feet; Thence Southwesterly in a direct line to a point on the Northeasterly line of said land so described in said Deed to Clare Schweitzer, distant thereon 30 feet Northwesterly from said point of beginning; thence Southeasterly along said Northeasterly line of said land so described in said Deed, a distance of 30 feet to the point of beginning.

PARCEL IV

Those portions of Lots 4 and 5 of Subdivision of part of Lot 1, Block 37, Hancock's Survey, in the City of Los Angeles, as per Map recorded in Book 5, Page 566 of Miscellaneous Records in the Office of the County Recorder of said County, described as follows:

Beginning at the intersection of the Northwesterly line of said Lot 4 with the Northeasterly line of Seventh Street, said intersection being South 62 degree 45 minutes 50 seconds East measured along said Northeasterly line 202.62 feet from the intersection of said Northeasterly line with the Southeasterly line of Bixel Street as said streets are established by the City Engineer of said City; Thence North 62 degrees 45 minutes 50 seconds West along said Seventh Street 40.00 feet; Thence North 27 degrees 15 minutes 70 seconds East 166.54 feet to the Southwesterly line of the 12-foot alley shown on said Map; Thence South 62 degrees 52 minutes 00 seconds East along said alley 149.00 feet; Thence South 27 degrees 15 minutes 07 seconds West 166.81 feet to said Northeasterly line of Seventh Street; Thence North 62 degrees 45 minutes 50 seconds West

along said Seventh Street, 109.00 feet to the point of beginning.

PARCEL V

Lot 7 of a Subdivision of a portion of Lot 1 in Block 37 of Hancock's Survey made at request of St. Paul's Protestant Episcopal Church, in the City of Los Angeles, County of Los Angeles, State of California, as per map recorded in Book 5 Page 566 of Miscellaneous Records, in the Office of the County Recorder of said County.

EXCEPT the South 10 feet taken for widening Seventh Street.

with the appurtenances, to be used for the sale, service and repair of Cadillac automobiles and other products of General Motors Corporation.

The term of this Lease shall commence on June 1, 1965, and shall expire on May 31, 1967.

Rental shall be at the rate of SIXTY THOUSAND DOLLARS (\$60,000.00) per year, payable in equal installments of FIVE THOUSAND DOLLARS (\$5,000.00) in advance on the first business day of each and every month during the term.

THE PARTIES HERETO COVENANT AND AGREE WITH EACH OTHER AS FOLLOWS:

FIRST—PAYMENT OF RENT

That the Lessee shall pay the rent at the times and in the manner aforesaid to Argonaut Realty Division of General Motors Corporation, Argonaut Building, 485 West Milwaukee, Detroit, Michigan 48202.

SECOND—REPAIRS

That the Lessee has inspected the premises and found them to be in good and acceptable condition. That the Lessee shall keep, and at the expiration of the term will remove its goods and peaceably yield up the premises, in as good order and condition as when delivered to it, ordinary wear and tear, damage by fire, windstorm, casualty and act of God or the public enemy excepted. Lessee however shall not be required to make any structural repairs or repairs to the roof.

THIRD—EASEMENTS

That the enjoyment and use of all entrances, exits, approaches and means of entrance and approach, now existing in favor of the demised premises shall not be interfered with or interrupted by any act or assent of the Lessor during the term of this Lease.

FOURTH—ASSIGNMENT

That the Lessee shall not assign, mortgage or encumber this Lease nor sublet the premises without the prior written consent of the Lessor in each instance.

FIFTH—NEGATIVE COVENANTS

That the Lessee shall not consent to any unlawful use of the premises and shall comply promptly with all statutes, ordinances, rules, orders, regulations and requirements of the Federal, State and Municipal Governments and of any of their departments and bureaus applicable to said premises. Lessee shall also comply promptly with all rules and regulations of the fire insurance underwriters, except that Lessee shall not be required to make any alterations which are necessitated by structural defects.

SIXTH—VIEWING PREMISES

That the Lessor and its representatives shall have the right to enter upon said premises or any part thereof at all reasonable hours for the purpose of examining the same or making such repairs or alterations thereto as may be necessary for the safety and preservation thereof, and the Lessee also agrees to permit the Lessor or its representatives to show the premises to persons interested in purchasing or leasing the property and to place upon said premises the usual notices "TO LET" and "FOR SALE", which notices Lessee shall permit to remain without molestation. It is agreed, however, that a "TO LET" notice shall not be posted except during the six months period prior to the expiration of Lessee's term.

SEVENTH—DEFAULT

That if the premises or any part thereof shall be deserted or become vacant during the term, or if any default be made in the payment of the rent or in the performance of any of the covenants herein contained, and such default shall continue for a period of ten (10) days after notice thereof in writing to Lessee, the Lessor may re-enter the premises by force, summary proceedings or otherwise, and remove all persons and their effects therefrom without being liable to prosecution therefor, and may hold the premises as if this Lease had not been made and the Lessee shall pay at the same time as the rent becomes payable under the terms hereof a sum equivalent to the rent reserved herein. Lessor may at its option in the event of such default rent the premises on behalf of the Lessee, and shall have the right to rent the premises for a longer

period of time than fixed in the original Lease without releasing the original Lessee from any liability. Any moneys so collected shall be applied, first, to the expense of resuming or obtaining possession; second, to restoring the premises to a rentable condition and then to the payment of the rent and all other charges due from the Lessee to the Lessor. Any surplus shall be paid to the Lessee, who shall remain liable for any deficiency.

EIGHTH—LESSOR'S LIABILITY

That the Lessor is exempt from any and all liability for any damage or injury to person or property caused by or resulting from steam, electricity, gas, water, rain, ice or snow, or any leak or flow from or into any part of said premises, or from any damage or injury resulting or arising from any other cause or happening whatsoever, unless said damage or injury is caused by or due to the negligence of the Lessor, its officers, employees, agents and invitees.

NINTH—SUBORDINATION

That this Lease shall be subject and subordinate to the lien of any mortgages hereafter placed on the premises and Lessee agrees to execute and deliver upon demand in confirmation of such subordination, such further instruments as shall be required by any mortgagees or proposed mortgagees. In the event that Lessee shall fail to execute and deliver any such instrument or instruments after the (10) days' notice in writing requesting the same, Lessee hereby appoints Lessor the attorney in fact of Lessee irrevocable to execute and deliver any such instrument or instruments on behalf of Lessee.

TENTH—INSOLVENCY OF LESSEE

That if at any time proceedings in bankruptcy, or pursuant to any other act for the relief of debtors, shall be instituted by or against Lessee, or if Lessee shall compound Lessee's debts, or assign over Lessee's estate, or effects, for payment thereof, or if any execution shall issue against Lessee, or any of Lessee's effects whatsoever, or if a receiver or trustee shall be appointed of Lessee's property, or if this Lease shall by operation of law devolve upon or pass to any person or persons other than Lessee, then and in each of said cases, Lessor may terminate this Lease forthwith by notifying Lessee as herein provided. Upon such termination, all sums due and payable, or to become due and payable by Lessee, shall at once become due and payable.

ELEVENTH—INCREASE IN INSURANCE

That Lessee will pay for all gas, electricity, water or fuel consumed on the premises and shall remove, or cause to be removed, all ice, snow and debris from the roof and sidewalks of said premises. That if Lessee shall do anything in said premises or bring anything into said premises, or permit anything to be brought into said premises, or to be kept therein, which will in any way increase the rate of insurance on said premises, then Lessee agrees to pay on demand any such increase or forthwith to remedy the cause of said rate increase and pay any increase in premium which may have accrued prior thereto.

TWELFTH—NON WAIVER

That the failure of the Lessor to insist upon a strict performance of any of the terms, conditions and

covenants herein shall not be deemed a waiver of any rights or remedies that the Lessor may have and shall not be deemed a waiver of any subsequent breach or default in the terms, conditions and covenants. This instrument may not be changed, modified or discharged orally.

THIRTEENTH—CONDEMNATION

In the event the premises or any part thereof are taken or condemned for any temporary or permanent public use, then in that event, at the option of the Lessor this Lease shall terminate as to the part so taken and there shall be no apportionment of the award but any unearned rent paid in advance shall be refunded to the Lessee.

FOURTEENTH—FIRE CLAUSE

That in case of fire or other damage to the premises, the Lessee shall give immediate notice to the Lessor. If such damage is partial, the Lessor will thereupon cause the premises to be repaired as speedily as possible, and if the damage is not due to the act or negligence of the Lessee, a just proportion of the rent reserved according to the extent to which the premises have been rendered untenable shall abate until the premises have been restored, but if the premises shall be substantially destroyed, either party may serve notice upon the other, within ten (10) days after such destruction, of its intention to terminate this Lease and upon the receipt of such notice, this Lease shall terminate and Lessee shall surrender the premises and pay all accrued rent to the date of such surrender.

FIFTEENTH—LIABILITY INSURANCE

That Lessee shall furnish the Lessor with policies of public liability insurance, insuring the Lessor in amounts and issued by companies satisfactory to Lessor.

SIXTEENTH—FIRE INSURANCE AND TAXES

That Lessor shall pay all real estate taxes and fire insurance to cover the demised premises. Provided, however, the Lessee agrees to reimburse Lessor for all real estate taxes levied against the demised premises during the term of this Lease or any extension thereof. Such determination of real estate taxes shall not include assessments for local improvements, which shall be paid by Lessor. If such taxes are based on a period extending beyond the term of this Lease, or any renewal thereof, such taxes shall be prorated. Lessor agrees to furnish Lessee with copies of such real estate tax bills and Lessee agrees to make prompt payment of such amounts to Lessor.

SEVENTEENTH—NOTICES

That all notices to be given hereunder by either party shall be in writing and shall be sent by registered mail with postage prepaid, and if intended for Lessor, shall be addressed as hereinbelow specified, and if intended for Lessee shall be addressed to:

until either party shall designate by written notice a new address to which such notices shall thereafter be addressed and mailed and notice given as aforesaid shall be a sufficient service thereof. Provided, however, that it is mutually agreed that the Lessor appoints the Manager and the Assistant Secretaries of Argonaut Realty

Division of General Motors Corporation, Argonaut Building, Detroit, Michigan 48202, as its agents and that any one of them may give all notices and receive all notices to be given hereunder, and may receive the rent, and notices shall be sent to any one of said agents and not otherwise. The right is hereby reserved by the Lessor to countermand such appointments and make others consistent herewith, due notice of which shall be given by the Lessor to the Lessee.

EIGHTEENTH—EXCAVATION ON ADJACENT PREMISES

In the event that an excavation is to be made for any purpose upon land adjacent to the premises hereby leased, Lessee shall afford to the person who is to cause such excavation license to enter upon the premises hereby leased for the purpose of doing such work as said person shall deem necessary to preserve the building on the demised premises from injury, and in any such case, the Lessee shall notify the Lessor.

NINETEENTH—ADDITIONAL RENT

That if Lessee shall default in the performance of any covenant on its part to be performed, Lessor may perform same at the expense of the Lessee, and any expense so incurred shall be deemed to be additional rent and shall be due from the Lessee on the first day of the month following the incurring of such expense.

TWENTIETH—ALTERATIONS

That Lessee will not make any alterations or add any construction whatsoever to the premises without the prior written consent of the Lessor in each instance, and if the Lessee makes any alterations or adds

any construction, such additional construction or alterations shall be removed at the expiration of the term and the premises shall be restored at the sole expense of the Lessee to the condition existing prior to Lessee's taking possession.

TWENTY-FIRST—NO ABNORMAL LOADING

That Lessee will store only such equipment and material in such quantity and weight as the buildings in their present condition are fitted for and the Lessee further agrees that in storing such equipment and material it will not stress the building's floors or supports beyond their normal capacity.

TWENTY-SECOND—WAIVER OF SUBROGATION

The Lessor and the Lessee waive all rights, each against the other, for damages caused by fire or other perils covered by insurance where such damages are sustained in connection with the occupancy of the leased premises.

TWENTY-THIRD—QUIET POSSESSION

The Lessor covenants that the Lessee on paying the rent and performing the covenants herein contained may peacefully and quietly have, hold and enjoy the premises for the term aforesaid, provided, however, that this covenant shall not be binding upon the Lessor after it ceases to be the owner of the premises.

TWENTY-FOURTH—TERMINATION

In the event that Lessee's Cadillac Dealer Selling Agreement is terminated or in the event that the premises are used for purposes other than the sale or servicing of General Motors Corporation's products, then

the Lessor may cancel this Lease by giving Lessee at least five (5) days' prior written notice.

TWENTY-FIFTH—SALE OF PREMISES BY LESSOR

The sale by the Lessor of the premises during the term hereof shall be subject to the rights of the Lessee under the terms of this Lease, and the Lessee shall be given the first right of refusal to purchase the premises, either all or in part.

The covenants and agreements contained in the foregoing Lease are binding upon the parties hereto and their respective successors, legal representatives and assigns.

IN WITNESS WHEREOF, Lessor has signed and sealed this instrument this day of A. D. 1965, and Lessee has signed and sealed this instrument this day of A. D. 1965.

GENERAL MOTORS
CORPORATION
(Cadillac Motor Car Division)
By
Vice President

ATTEST

Assistant Secretary

Admitted in Evidence 6-24-66.

GENERAL COUNSEL'S EXHIBIT No. 14-B.
BILL OF SALE

KNOW that GENERAL MOTORS CORPORATION (Cadillac Motor Car Division), a Delaware corporation, pursuant to and subject to Agreement dated May 11, 1965, between General Motors Corporation (Cadillac Motor Car Division), as Seller, and LaRue C. Thomas, as Buyer, which Agreement was assigned by LaRue C. Thomas to Thomas Cadillac, Inc., a California corporation, and in consideration of the sum of to it in hand paid by Thomas Cadillac, Inc., the receipt whereof is hereby acknowledged except for the amount specified on Schedule C hereto which amount will be paid to General Motors Corporation (Cadillac Motor Car Division) by Thomas Cadillac, Inc.'s financing institution, has bargained, sold, delivered and set over, and by these presents does bargain, sell, deliver and set over to Thomas Cadillac, Inc. all the property described in the annexed schedules, and located at 1041, 1064, and 1076 West Seventh Street, Los Angeles, California, to have and to hold the same forever.

The said property is described in the following schedules which are incorporated herein and made a part hereof, to wit:

Schedule A—Fixed Assets.

Schedule B—Company Cars and Used Cars.

Schedule C—New Cadillac Motor Vehicles and Chassis.

Schedule D—Cadillac Repair Parts.

Schedule E—Cadillac Accessories.

Schedule F—Cadillac Repair Parts and Accessories Not Included in D and E.

Schedule G—Special Tools.

Schedule H—Gasoline, Oil, and Grease, New Tires
and Tubes.

Schedule I—Paint Material.

Schedule J—Undercoating.

Schedule K—Miscellaneous Items.

The said General Motors Corporation (Cadillac Motor Car Division) does hereby, for itself, its successors and assigns, covenant with the said Thomas Cadillac, Inc., its successors and assigns, that General Motors Corporation (Cadillac Motor Car Division) is the owner of and has good and complete title to said property, free and clear from all charges, liens and encumbrances whatsoever, and has good right to sell the same; and that General Motors Corporation (Cadillac Motor Car Division) will, upon request of Thomas Cadillac, Inc. from time to time execute and deliver such further instruments as may by Thomas Cadillac, Inc. be reasonably deemed proper or necessary for the more effectual vesting in Thomas Cadillac, Inc. of the title hereby intended to be transferred.

IN WITNESS WHEREOF, General Motors Corporation (Cadillac Motor Car Division) has caused these presents to be executed by its duly authorized representatives as of the 1st day of June, 1965.

WITNESSED BY:

[Illegible]

GENERAL MOTORS
CORPORATION

(Cadillac Motor Car Division)

By [Illegible]

Attorney-in-Fact

State of California, County of Los Angeles—ss.

On this 7 day of July, 1965 before me personally appeared [INELIGIBLE], to me known, who being by me duly sworn, did depose and say that he is the Attorney-in-Fact of General Motors Corporation (Cadillac Motor Car Division), the corporation described in and who executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

/s/ Louis L. Jackson

Notary Public in and for said county
and state

My Commission Expires: May 3, 196....

Summary of Schedules for Bill of Sale Dated June 1,
1965, Executed by General Motors Corporation
(Cadillac Motor Car Division) to Thomas Cadillac,
Inc.

Schedule

Schedule A—Fixed Assets

Schedule B—Company Cars and Used Cars

Schedule C—New Cadillac Motor Vehicles and
Chassis

Schedule D—Cadillac Repair Parts

Schedule E—Cadillac Accessories

Schedule F—Cadillac Repair Parts and Acces-
sories Not Included in D and E

Schedule G—Special Tools

754 *International Assn. of Machinists, etc. vs.*

Schedule H—Gasoline, Oil and Grease, New
Tires and Tubes

Schedule I—Paint Material

Schedule J—Undercoating

Schedule K—Miscellaneous Items

TOTAL

Sales Tax at 4% on Schedules A, G and K

GRAND TOTAL

.....Seller's Initials

.....Buyer's Initials

Schedule A to Bill of Sale Dated June 1, 1965, Executed
by General Motors Corporation (Cadillac Motor
Car Division) to Thomas Cadillac, Inc.

Schedule A

Fixed Assets

See Detailed Schedule attached and initialed by both
parties.

.....Seller's Initials

.....Buyer's Initials

Schedule B to Bill of Sale Dated June 1, 1965, Executed
By General Motors Corporation (Cadillac Mo-
tor Car Division) to Thomas Cadillac, Inc.

Schedule B

Company Cars

Description

1965 Cadillac, Hardtop Sedan DeVille Motor
#B5126023

1965 Cadillac, Hardtop Sedan DeVille Motor
#B5126075

1965 Cadillac, DeVille Convertible Motor

#F5119412

1965 Cadillac, Coupe DeVille Motor

#J5122904

1965 Cadillac, Calais Hardtop Sedan Motor

#N5100928

1965 Cadillac, Calais Hardtop Sedan Motor

#N5118639

Used Cars

See Detailed Schedule Attached

Total Company Cars and Used Cars

Seller's Initial.....

Buyer's Initial.....

Schedule B

Used Cars

Description

1961 Sedan deVille Motor # 61A 034652

1962 Sedan deVille Motor # 62L 006493

1961 Fleetwood Motor # 61M 057060

1960 Sedan deVille Motor # 60B 039876

1961 Coupe deVille Motor # 61J 103090

1965 Fleetwood Motor # M5110144

Total Used Cars

.....Seller's Initials

.....Buyer's Initials

Schedule C to Bill of Sale Dated June 1, 1965, Executed by General Motors Corporation (Cadillac Motor Car Division) to Thomas Cadillac, Inc.

Schedule C.

New Cadillac Motor Vehicles and Chassis

See Detailed Schedule attached and initialed by both parties.

The new Cadillac motor vehicles and chassis listed on the attached schedule are being financed by Thomas Cadillac, Inc. with its financing institution and payment therefor will be made directly to General Motors Corporation (Cadillac Motor Car Division) by such financing institution.

.....Seller's Initials

.....Buyer's Initials

Schedule D to Bill of Sale Dated June 1, 1965, Executed by General Motors Corporation (Cadillac Motor Car Division) to Thomas Cadillac, Inc.

Schedule D

Cadillac Repair Parts

Physical inventory taken as of May 15, 1965, and adjusted as of May 31, 1965, copies of which have been initialed by and delivered to both parties.

.....Seller's Initials

.....Buyer's Initials

Schedule E to Bill of Sale Dated June 1, 1965, Executed by General Motors Corporation (Cadillac Motor Car Division) to Thomas Cadillac, Inc.

Schedule E

Cadillac Accessories

Physical inventory taken as of May 15, 1965, and adjusted as of May 31, 1965, copies of which have been initialed by and delivered to both parties.

.....Seller's Initials

.....Buyer's Initials

Schedule F to Bill of Sale Dated
June 1, 1965, Executed by General
Motors Corporation (Cadillac Motor
Car Division) to Thomas Cadillac, Inc.

Schedule F

Cadillac Repair Parts and Accessories

Not Included in Schedules D and E

Cadillac Repair Parts	Amount
	\$

Physical inventory taken as of
May 15, 1965, and adjusted as of
May 31, 1965, copies of
which have been initial by and
delivered to both parties.

Cadillac Accessories	Amount
----------------------	--------

Physical inventory taken as of
May 15, 1965, and adjusted as of
May 31, 1965, copies of
which have been initial by and
delivered to both parties.

Total Cadillac Repair Parts and Accessories
not Included in Schedules D and E

.....Seller's Initials

.....Seller's Initials

Schedule G to Bill of Sale Dated
June 1, 1965, Executed by General
Motors Corporation (Cadillac Motor
Car Division) to Thomas Cadillac, Inc.

Schedule G
Special Tools

Physical inventory taken as of
May 31, 1965, copies of which
have been initialed by and
delivered to both parties.

.....Buyer's Initials

.....Buyer's Initials

7th and Bixel Branch
Inventory of Special Tools
Month Ending May 31, 1965

Schedule G

Kent Moore Tools

J21180	J740	J4174	J21001	J8092 (2)
J6125 (3)	J20154	J6349	J8999	J21855-4
J5984 (3)	J9172	J8999	J8999-7	J21852
J8131	J3289-14	J7821	J8999-9	J21524
J2986 (2)	J6257	J21011	J8999-16 (2)	J21001
J947 (4)	J21930	J21010	J8999-2	J21999
J5904	J21364	J7713-10	J2162	J7890 (2)
J29863	J21150	J7712-01	J6219	J7797-02 (2)
J8531	J21883-1	J6135 (2)	7576	J772301 (2)
J7723-01	J218554	J6282 (2)	J8999-10	J21854
J947-2	J21797	J21370	6216	J7431
J6525-01 (2)	J Clamp Set	J21370-5	J8999-5	J7081
J7081	J3289-01	J21370-4	J5188	J7710
J9646	J1123	J7411-02	J2587	J7796
J3426	J21833	J3224 (2)	J5188	J5463
J306322	J21885	J4174	J8999-8	J5091
J168	J21970-1	J6624	J5343	J21104
J7426	J8133	J21109	J35251 (2)	J7844-1 (3)
J5463 (7)	J21524	J7778	6222	J7154-01 (2)
J4139	J21369-2	J7723-01	J3957	J21180-1
J3291	J21365	J21366	J3957-2	J6486
J2111 (4)	J21601	J11442	J3957-3	J7898
J3064-3	J21427	J8400	7111	J21181-01
J6544	J21477	J8532	A4-634 (2)	J9148
J5182	J63851	J9172	J4731	J21664
J6390	J3007	J7576	6285	J9646

Schedule G (Continued)

Kent Moore Tools

J3066	J6885-2	J6219	5188	J9600-2
J1264	J8590	J7539	J2587-B	J9717-2
J8125 (2)	J6591	J5191	J21000	J8433-1
J21180-1	J5790	J2100	7539	J8433-2 (2)
J8997	J3790-27	J5188	6657	J7316
J9148	J5790-29	J6216	21549	J9717-1
J1859	J8999	J2587	J7160	J9287-3
J8433-1	J2548	J6657	J6968	J21113
J8990-2	J21529	J5189	J6486	J9504
J7081	J8465	J7111	J6592-02	J1357
J21179	J7605-02	J7539	J5757	J2619
J8999 (2)	J8059(2)	J7026	J8458	J7754
J21009	J21010	J5154	J8457	J21180-1
J8999	J7160	J2170	J8456	J8125-1 (2)
J2130	J5406	J21359	J7797	J1859-02 (1)
J21852	J21179	J87637	J6997	J7585
J8999	J5794 (2)	J6624	J9148	J5659
J5749	J6481	J6608	J21010	J21179
J741102	J9718	J6592	J8547	J4139
J21	J9719-01	J6592-02	J6733	J5405
J8614	J8047	J7797-02	J8529	J9719-01
J9540 (5)	J3848	J6335	J7412	J6295-1
J646	J5514	J21178 (2)	J21529	J21011
J7481	J21052	J21092	J21970 (2)	J21009
J21367	J6295-01	J21104	J21853	J7411-02

7th and Bixel Branch
Inventory of Special Tools
Month Ending May 31, 1965

Kent Moore Tools

J5406

J9540

J21524

J5805 (2)

J21109

J7708

J8988

J7085

6788-2

J7844

J8966

J8437

J6481

J5757

J1859

J21853

J21852

J21855-4

J21854

J1859-02

J21970

J21999

J21115

J8436

J7426

J21529

J21109

J7318

J21524

6733

6407-2

J7316

..... Initial of Seller

..... Initial of Buyer

Schedule H to Bill of Sale Dated
June 1, 1965, Executed by General
Motors Corporation (Cadillac Motor
Car Division) to Thomas Cadillac, Inc.

Schedule H

Gasoline, Oil and Grease
New Tires and Tubes

Gasoline, Oil and Grease

Amount

Physical inventory taken as of
May 31, 1965, copies of which
have been initialed by and
delivered to both parties.

New Tires and Tubes

Physical inventory taken as of
May 31, 1965, copies of which
have been initialed by and
delivered to both parties.

Total Gasoline, Oil and Grease
New Tires and Tubes

.....Seller's Initials

.....Buyer's Initials

Los Angeles Branch
7th & Bixel Inventories
Month Ending 31, 1965

Schedule H

New Tires and Tubes Listed by Tag Number

782	1244	729
783	1224	730
784	1261	731
785	1225	780
786	1226	781
787	1227	1200
788	1228	1201
789	7275	1202
790	7303	1203
791	677	1204
792	678	1205
793	679	1206
794	680	1207
795	681	1208
796	682	1209
797	133	1210
798	134	1211
799	135	36
800	136	578
750	137	622
7260	138	623
1229	683	624
1230	684	625
1231	685	626
1232	686	627
1233	687	628
1234	688	629
1235	689	630
1236	690	653
1237	139	654
1238	140	655

New Tires and Tubes Listed by Tag Number (Cont.)

1239	141	656
1240	142	657
1245	143	658
1246	144	659
1247	147	631
1248	148	632
1253	691	633
1254	692	634
1255	693	635
1256	694	636
1257	695	637
1258	696	638
1259	697	660
1260	698	661
7301	699	662
7302	700	663
7304	701	664
7306	702	665
7307	703	666
7308	704	667
1249	722	639
1250	723	640
1251	724	641
1252	725	642
1241	726	643
1242	727	644
1243	728	645
646	609	
1269	610	
1268	611	
587	612	
598	613	
1008	614	
577	615	
530	616	
588	617	

New Tires and Tubes Listed by Tag Number (Cont.)

897	618
7878	619
8745	620
8749	621
8748	668
8746	669
8747	670
599	671
600	672
601	673
1010	674
1178	675
1177	676
1176	
1175	
1179	
1180	
1181	
1182	
1183	
1184	
1185	
1186	
1187	
1188	
1189	
1190	
1191	
1192	
1193	
1194	
1195	
1196	
1197	Total Tires & Tubes \$
1198 Seller's Initial
1199 Buyer's Initial

Los Angeles Branch
7th & Bixel Inventories

Month Ending May 31, 1965

Gasoline

4,807 Gallons .303

Oil and Grease

6th Floor

153 Gals. Oil, Parapet S.A.E. 20
7 Gals. Oil, Penn H.D. Z-7 S.A.E. 20
87 Gals. Hydramatic Fluid
100 Lbs. Grease-Differential
80 Lbs. Grease-Chassis
40 Lbs. Grease-Bearing
540 Gals. Hydramatic Fluid 5th Floor
5 Gals. Hydramatic Fluid 3rd Floor
2 Lbs. Grease-Bearing

Basement

85 Gals. Oil, Parapet S.A.E. 20
39 Gals. Oil Parapet S.A.E. 40
109 Gals. Oil, Penn H.D. Z-7 S.A.E. 20
370 Gals. Oil, Parapet S.A.E. 10-30
100 Gals. Oil, Penn Z-7 S.A.E. 10-30
380 Gals. Hydramatic Fluid
140 Lbs. Grease-Differential
540 Lbs. Grease-Chassis
40 Lbs. Grease-Bearing

Used Car Lot

188 Gals. Oil, Parapet S.A.E. 20
15 Gals. Oil, Parapet S.A.E. 30
35 Gals. Hydramatic Fluid
80 Lbs. Grease-Differential
160 Lbs. Grease-Chassis
8 Lbs. Grease-Bearing

TOTAL GASOLINE, OIL AND GREASE

8th FloorPaint Inventory

Cutter Compound, Machine	7 Gals.	
Cutter Compound, Hand	4 Gals.	
Lacquer, Misc. Colors	77 Gals.	
Lacquer, Maroon	1 Gals.	
Lacquer, Black	6 Gals.	
Lacquer, Tinting Colors	3 Gals.	
Lacquer, Thinner	188 Gals.	
Lucite, Misc. Colors	205 Gals.	
Firefrost Colors	16 Gals.	
Firemist Colors	21 Gals.	
Acrylic Red	5 Gals.	
Acrylic Black	8 Gals.	
Acrylic Thinner	15 Gals.	
Surfacer	3 Gals.	
Prepsol	5 Gals.	
Pyraopprep or Make Ready	1 Gal.	
Bleederseal	1 Gal.	
Chassis Black	1 Gal.	
Steel Wool	21 Rolls	
Machine Paper	0.1 Sleeves	its
Sand Paper, Wet or Dry	2 Sleeves	its
Masking Tape ¼ inch	5 Rolls	
Masking Tape ½ inch	4 Rolls	
Masking Tape ¾ inch	40 Rolls	
Masking Tape — 2 inch	18 Rolls	
Kraft Paper — 12 inch	6 Rolls	

3rd Floor

Steel Wool	6 Rolls
Blue Coral Sealer ½lb. can	1 Can
Masking Tape — 2 inch	1 Roll

Used Car Lot

Lacquers, Misc. Colors	5 Gals.
Lacquer Thinner	10 Gals.
Lucite, Misc. Colors	8 Gals.
Steel Wool	2 Rolls
Magic Mirror Cleaner	1 Gal.

4th Floor Stock RoomSand Paper

80D	.7 Sleeves
100C	2.8 Sleeves
220A	.8 Sleeves
240A	.5 Sleeves
280A	.4 Sleeves
320A	1.2 Sleeves
360A	.8 Sleeves
400A	.7 Sleeves
500A	1.3 Sleeves
600A	.1 Sleeves

Masking Tape

½ inch	1 Roll
¼ inch	32 Rolls
¾ inch	75 Rolls
2 inch	27 Rolls

Kraft Paper

None	
Steel Wool	28 Rolls

Underseal Inventory

Total

Underseal	65 Gals.
Trim	20 lbs. Cotton

Schedule J

.....Seller's Initials

.....Buyer's Initials

Los Angeles Branch
7th & Bixel Inventories
Month Ending May 31, 1965

Masking Tape—2 inch	18 Rolls
Kraft Paper—12 inch	6 Rolls

3rd Floor

Steel Wool	6 Rolls
Blue Coral Sealer ½ Lb. can	1 Can
Masking Tape—2 inch	1 Roll

Used Car Lot

Lacquers, Misc. Colors	5 Gals.
Lacquers Thinner	10 Gals.
Lucite, Misc. Colors	8 Gals.
Steel Wool	2 Rolls
Magic Mirror Cleaner & Polish	1 Gal.

4th Floor Stock Room

Sand Paper	
80D	7 Sleeves
100C	28 Sleeves
220A	8 Sleeves
240A	5 Sleeves
280A	4 Sleeves
320A	12 Sleeves
360A	8 Sleeves
400A	7 Sleeves
500A	13 Sleeves
600A	1 Sleeve
Masking Tape	
¼ inch	32 Rolls
½ inch	1 Roll
¾ inch	75 Rolls
2 inch	27 Rolls
Kraft Paper	
None	
Steel Wool	28 Rolls

Underseal Inventory

Underseal	65 Gals.
Trim	20 Lbs. Cotton
	Total

.....Seller's Initials
Buyer's Initials

Schedule I to Bill of Sale Dated
June 1, 1965, Executed by General
Motors Corporation (Cadillac Motor
Car Division) to Thomas Cadillac, Inc.

Schedule I
Paint Material

Physical Inventory taken as of
May 31, 1965, copies of which
have been initialed by and
delivered to both parties.

----- Seller's Initial
----- Buyer's Initial

Schedule J to Bill of Sale Dated
June 1, 1965, Executed by General
Motors Corporation (Cadillac Motor
Car Division) to Thomas Cadillac, Inc.

Schedule J
Undercoating

Physical inventory taken as of
May 31, 1965, copies of which
Have been initialed by and
delivered to both parties.

----- Seller's Initial
----- Buyer's Initial

Schedule K to Bill of Sale Dated
June 1, 1965, Executed by General
Motors Corporation (Cadillac Motor
Car Division) to Thomas Cadillac, Inc.

Schedule K
Miscellaneous Items

Physical inventory taken as of
May 31, 1965, copies of which
Have been initialed by and
delivered to both parties.

----- Seller's Initial
----- Buyer's Initial

7th and Bixel Branch
 Month Ending May 31, 1965
Inventory of Miscellaneous Items
Schedule K

Miscellaneous Items

<u>Quantity</u>	<u>Description</u>
1	Box Misc. Drills
2	Sioux ¼" Angle Drill
1	B & D ¼" Drill
1	Marquette Trickle Changer
1	Ultra Violet Light Oil Tester
2	619 Suction Gun
2	Eye Aiming Device
1	AE2 Tester
3	Lincoln Suction Gun
5	Drop Lights
1	Sun Cell Tester
1	Battery Hydrometer
4	Snap Ring Pliers, Worn
2	Seal Protection Power Brake
6	Trans-Oil Drain Pans
1	Reel Drop Light
1	P.S. Pump Pressure Tester
1	1" Lb. Wrench
1	Seal Protector
1	Pitman Arm Puller
1	Portable Greaser
4	Chain Hoist Links
1	Manual Toe-in Gage
1	HM Cleaning Drum Set
9	Fire Ext.
9	Water Hoses
12	Measured Oil Cans
25	Rubber Fender Covers
10	Water & Oil Drain Pans
1	9 Lb. Sledge Hammer
1	Metal Hand Truck
1	Clutch Tool
3	Railroad Jacks
1	Small Hole Saw (12 pieces)
4	Extra Torch Gauges
2	Extra Cutting Torch Heads
2	Grinding Disc Cutters
1	Adjustable Lamp
1	Set Overhead Heat Lamps — 18 Bulbs
2	Pair Heavy Shears (Trim Dept.)
1	Soldering Iron

7th and Bixel Branch
 Month Ending May 31, 1965
Inventory of Miscellaneous Items
Schedule K

Miscellaneous Items

<u>Quantity</u>	<u>Description</u>
1	Rivet Gun
1/2 set	Top Dies
2	Large Clamps
1	1/4 Inch Drill
1	Spray Gun
1	Headlamp Adjusting Screen
1	Masking Paper Machine
13	Drop Light Reels
1	Valve Spring Tester
1	Head Assembling Tool
1	Gas Manual Pump
1q	Glass Vise, Sommer 50W
1	Set Starnett Inside Mike 1" to 8"
1	Set 8 Inside "Mike" Anvils
1	Dial Indicator
1	Small Dial Indicator
6	Lathe Tool Bits
1	Set 3/16" Figure Stamps
1	Set 5/16" Figure Stamps
1	Set 3/16" Letter Stamps
2	Set 1/4 Inch Letter Stamps
1	0 to 1" Outside Mike
1	1-2" Outside Mike
1	3-4" Outside Mike
1	2-3" Outside Mike
3	Steel Stamp Drivers
1	Mike set 0 to 6"
1	Sunnen Cyl. Joinder
1	5000 Olmmeter
1	VC Mike
1	Saber Saw Model 535
1	Sun Cyl. Leak Tester
1	Sun CFC Field Control
1	Ring Compressor
1	Sun 230 Cell Tester
3	Sun Res. 1 1/4 OHM
1	Field Rheostat 25 OHM
1	Sun AE Tester
1	PCV Tester
1	UMS6—12 Res.
1	Set T3 Lamp Adj.

7th and Bixel Branch
Month Ending May 31, 1965
Inventory of Miscellaneous Items

Schedule K

Miscellaneous Items

<u>Quantity</u>	<u>Description</u>
1	Snap on 150 Torque Wrench
1	Snap on 150 Torque Wrench
1	Stone Dressing Tool
3	Stone Holder G Wheel
1	Black and Decker Stone Sleeve
1	4" Ring Compressor
2	National Drill Index $\frac{1}{16}$ to $\frac{1}{2}$ "
1	Snap on 16 Ft. Socket
1	Deglazer
1	Amnco Ridge Reamer
2	300# Oil Gauge
1	100# Oil Gauge
1	Power Steering Pressure Tester
1	Set Tape and Dies, Ace
3	Tape NPT $\frac{1}{2}$ - $\frac{3}{8}$ - $\frac{1}{4}$
1	Set Steel Letter Stamps
1	AR 68 Thread Chaser
2	Wheel Pullers
1	$1\frac{3}{16}$ " Handle and Socket
2	Flat Head Valve Lifters
2	Fan Belt Adj. Tools
2	Cam Brg. Installer
1	Comb. Thread Chaser
1	A4634- $1\frac{1}{16}$ " Socket
2	50 Lb. Tension Scales
1	Marq. Wrench, GW 8313
1	Clutch Align. Tool
1	Torque Adapter
1	16" Pipe Wrench
1	DS Pressure Gage
1	Fisher Clamp
1	Sun Scale
1	Sun Motoring Scale
1	Tire Gage
1	Torque Wrench
1	Box Assorted Tools (20 Pcs.)
2	Anti Freeze Testers
1	Puller Assembly
1	Seal Installer
2	Torbo HM Clamps

7th and Bixel Branch
Month Ending May 31, 1965
Inventory of Miscellaneous Items

Schedule K

Miscellaneous Items

<u>Quantity</u>	<u>Description</u>
1	Hyd. Leak Down Tool
2	Wheel Seal Installers
1	Bearing Puller
3	25' Air Hose
1	Pinion Balance Tester
1	Valve Spring Remover
1	Sun Vat Model 20
2	Sun Timing Light
1	Water Pump Rebuild Stand, Complete
1	Soldering Oven
1	AC Crankcase Vent Tester
1	Sun Compression Tester
1	AC Spark Plug Cleaner
16	Air Hose
62	Jack Stands
1	Cooling System Flow Tester
1	Cooling System Gas Tester
3	Cooling System Pressure Tester
1	Cooling System Flush Nozzle
1	Flow Tester Selector Valve
1	Manual Barrel Pump
2	Vice
1	Sun Timing Light, Model 45, Ser. #14A51566
1	Volt Amp. meter #38798
1	Anti Freeze Tester, #808
1	Battery Cell Tester, Model #A770
1	AC Positive Crankcase Ventilation Tester #AC Type CT-1
1	Weller Soldering Gun, #D440
1	Electric Drill (BD), Serial #281 132
1	General Electric Heater
11	Car Stands
1	Bubble Balancer, Serial #8021
1	Battery Cell Tester
6	Drop Lite Cords
3	Wheel Bearing Race Installers
1	Wheel Bearing Grease Packer
3	Battery Water Fillers
2	Oil Can Spray Guns
5	Solvent Part Wash Tanks
9	Fire Extinguishers

7th and Bixel Branch
Month Ending May 31, 1965
Inventory of Miscellaneous Items

Schedule K

Miscellaneous Items

<u>Quantity</u>	<u>Description</u>
2	Creepers
3	Rag Holders
1	Tire Water Test Tank
1	Voltmeter and Ampometer
1	Tire Leak Tester
3	Underseal Guns
1	Underseal Regulator and Hoses
2	6 ft. Safety Stands, Underseal Rack
2	Fans on Stands, Underseal Rack
4	Vise
1	6 Qt. Swingspout Oil Can (Pressure)
1	1 Qt. Swingspout Oil Measure
1	Burroughs Belt Tension Gauge
1	Oil Air Pump, Barrel Type & Regulator
13	Jack Stands
2	Water Drain Pans
1	Water Filler Can
1	AC T3 Type H Headlight Adj.
1	Headlight Adj. Screen
8	Air Hose w/Quick Coupler
4	Water Hoses with Filter Nozzle
5	Polishing Buffer
1	¼ In. Angle Electric Drill
1	Black Hawk Porter Power
1	Vacuum Gauge
2	Torque Wrench to 150#
1	Torque Wrench to 25#
1	Set Drills-22
1	Set Battery Jump Cables
1	Willow Instant Soldering Gun
1	Pneumatic Tube Blower
1	Mitre Box
1	Skill Saw
1	Milwaukee Sawzall
1	Sure Set Cement Maid Hammer
1	Electric Jack Hammer
1	1 Burner Elect. Plate
1	Gasoline Sears Lawn Edger
1	Sears Lawn Mower
1	Safety Switch Box
1	4 ft. Aluminum Ladder

7th and Bixel Branch
Month Ending May 31, 1965
Inventory of Miscellaneous Items

Schedule K

Miscellaneous Items

<u>Quantity</u>	<u>Description</u>
1	6 ft. Aluminum Ladder
1	8 ft. Aluminum Ladder
1	20 ft. Ext. Ladder
1	National Air Sander
2	Carpenter Hammers
1	Miter Saw
1	Hand Saw
5	Boxes, Paper Floor Mats
1	Sears Radical Arm Saw
1	36" Pipe Wrench
1	24" Pipe Wrench
1	18" Pipe Wrench
1	14" Pipe Wrench
1	Pipe Reamer
1	Pipe Cutter
9	Pipe Dier Worth Handler
1	Heavy Hammer
1	1/4" Rand Snake
1	Large Snake
1	Pipe Vise & Stand
1	Bench Pipe Vise
3	Bench Viser
1	Wire Brush & Grinder
1	Elect. Drill & Stand
2	50' Air Hose
1	Spray Paint Gun
1	1/4 Elect. Drill
	Assorted Sizes Steel Bits
4	Velbist Air Blowers
	Assorted broken Boxes Wood Screws
	Assorted broken Boxes Stove Bolts 3/4
	Assorted broken Boxes Stove Bolts 3/16
Approx.	20 Lbs. Wood Nails
	Kelite Steam Machine Repr. Parts
2	Drop Lights
4	Ext. Cords
Approx.	20 Gals. Various Brands of Paint
	Toilet Valve Repair Parts
	Air Fittings—Packing & Misc. Repr. Parts
	Conduit-Elec. Reprs Parts, Elect. Wire, etc.
	Buffer & Grinder Repair Parts
	Copper Tubing

7th and Bixel Branch
Month Ending May 31, 1965
Inventory of Miscellaneous Items
Schedule K

Miscellaneous Items

<u>Quantity</u>	<u>Description</u>
2 lengths	21' 1½" Gal. Pipe
1 length	21' 1¼" Gal. Pipe
1 length	21' 1" Gal. Pipe
1 length	21' ¾" Gal. Pipe
2 lengths	21' ½" Gal. Pipe
2 lengths	21' ⅜" Gal. Pipe
2 lengths	21' ¼" Gal. Pipe
	Galvanized Plumbing Fittings
	Asst. Brass Valves
40 Ft.	⅛ x ¾" Flat Cold Roll Steel
30 Ft.	⅛ x 1½" Roll Angle Iron
30 Ft.	⅛ x ¾" Cold Roll Angle Iron
20 Ft.	¼ x 2" Cold Roll Angle Iron
200 Lineal Ft.	¾" Quarter Round
100 " "	¾" Corner Mould
18 Pc.	1 x 4 x 8 Clear Redwood
5 Pc.	2 x 4 x 16' No. 1 Com. Redwood
5 Pc.	2 x 12 x 12 No. 1 Com. Redwood
2 Pc.	2 x 8 x 12 No. 1 Com. Redwood
4 Pc.	4 x 4 x 12 No. 1 Com. Redwood
36 Pc.	¼ x 1½ x 6" Redwood Elevator Gate Slats
1	Used Door
6 Pc.	¾ x 2 x 8 No. 1 Com. fir.
2 Sheets	¼ x 4 x 8 Plywood, Good 1 side
1 Sheet	¾ x 4 x 8 Plywood, Good 1 side
4 Sheets	⅜ x 4 x 8 Plywood, Good 1 side
1 Sheet	½ x 4 x 8 Plywood, Good 1 side
150	200W Light Bulbs
140	75W Shock Proof
61	100W Light Bulbs
137	75W Clear Light Bulbs
66	150W Reflector Flood Lights
48	250W Reflector Flood Heat Lights
24	250W Infra Red Heat Lamps
24	500W Clear Bulbs
50	48" T 12 Fluorescent Tubes 40W
20	F96 T 12 H.O. Fluorescent Tube
48	96" T 8 Slimbine Fluorescent Tube
24	96" T 12 Slimbine Fluorescent Tube
56	25W Red Nite Light Bulbs
26	30W F 30 T 8 CW Fluorescent Tube

7th and Bixel Branch
 Month Ending May 31, 1965
Inventory of Miscellaneous Items
Schedule K

Miscellaneous Items

<u>Quantity</u>	<u>Description</u>
20	15W F 15 T 8 CW Fluorescent Tube
37	40W Re-set Starter
1	Shovel
1	Hoe
1	Garden Rake
1	10 Lb. Sledge Hammer
1	6 ft. Pinch Bar
9 Cases	Scott #150 Fold Hand Towels
1 Case	(100) roll Scott #510 Toilet Tissue
4 Cases	Blake Moffit & Towne Fold Napkins
3 Cases	American Paper Cups Stock #63-3½ oz.
5 Gals.	Tile Emulsion (for floor tile)
3 Gals.	Steelcote Paint Thinner
2 Gals.	Henry Blastic roof cement
2 Gals.	Paint Rollers 9" (used)
2 Gals.	4" Paint Brush (used)
4 Bottles	Super Charge Drain Cleaner
3 Gals.	A.C. 40 Sanco Towes Treatment
12	Plumbing Friend Plungers
7	Straw House Broom
3 Rolls	Felt Glass Tape
1 Roll	Glass Tape ¾"
5 Cans	Veg. Oil Soap
2	Auto Body Sealer
20 Blades	Hack Saw Blades
3 Packs of 6	Door Ease
3 Packs of 6 cans #14	Black Spray Paint
2 Cans	Brazing Flux
7 Packs	Sand Paper #80
7	DuPont Spray
7 Packs	Sanding Disc. Grit 24-A
3 Packs	Sanding Disc. Grit 50-A
4 Packs	Sanding Disc. Grit 16-B
21 Packs	Sanding Disc. Grit 36-A
2 Rolls	Glass Tape ¼"
5	Parts Cleaning Brush
5 Gal.	Window Cleaner
5 Lb. Rolls	5 Core Solder-Flux
2	Bernz-O-Matic Fuel
4	Delco Dist. Cam. Lube

7th and Bixel Branch
 Month Ending May 31, 1965
Inventory of Miscellaneous Items
Schedule K

Miscellaneous Items

<u>Quantity</u>	<u>Description</u>
11, 5 Lb. Cans	Wire Solder
7, 1 Lb. Cans	Dupont Bug Remover
2	Car Seam Sealer (black)
6	Car Seam Sealer (nat.)
13 Tubes	Trim Cement (black)
8 Qts.	Trim Cement
9 Gal.	Trim Cement
10 Tubes	Weather Strip Cement (black)
2 Qts.	Weather Strip Cement (black)
1 Gal.	Weather Strip Cement (black)
7 Boxes	Body Caulking Strips
10 Tubes	Body Caulking Tubes
25 Rolls	Electric Tape #33
2 Tubes	Silicone Compound
6 Tubes	Permatex #1
8 Tubes	Permatex #2
10 Pkg.	Steel Wool #1
2	Wire Brush
21	Spray Guns
8	Buffers
6	Mity Midget Sanders
2	Blow Guns
5	50' Air Hoses
3	Blue Coral Tote-Carts
9	Masking Machines
1	Reg. Table Fan
5	Fire Extinguishers
4	Drop Cord Lights
6	Spray Paint Guns, DeVilbiss
1	Sander, Nat. Air
1	Air Regulator, DeVilbiss
10	Jack Stands
1	Vac. Gauge, Sun
1	Current Tester, Lester
1	Cell Tester, Lester
1	Wheel Puller, Proto
1	Compression Gauge, Sun
1	Timing Light Kit, Sun
1	Radiator Pressure Tester, Stant
1	Steering Wheel Puller, Cal/Van
1	Steering Wheel Puller, Kent

7th and Bixel Branch
Month Ending May 31, 1965
Inventory of Miscellaneous Items

Schedule K

Miscellaneous Items

<u>Quantity</u>	<u>Description</u>
1	Timing Light, Sun
1	¼" Drill
2	Wall Type Drop Cords
2	Polish Carts
10	Air Hoses
1	Disc. Cutter
1	Wash Vat
2	Porto Power Jacks & Fittings (1 lrge., 1 small)
2	Hand Trucks
1	Elect. Heater
1	Brake Bleeder
1	Champion Plug Cleaner
1	Water Hose, 30 ft.
1	Drop Light
1	Sioux Polishing Buffer
1	Welding Cart
1	¼" Drill Index
1	Ace Super Set Taps & Dies #614
1	Motor Shampoo Kit
1	Marquette Battery Charger, Model 321-S
1	Battery Water Tester & Carrier
3	Creeper
8	Jack Stands (Pair)
1	Small Solvent Tank Parts Cleaner
11	Drop Light, Std.
12	Bench Vise
6	Drop Light, Reel Type
4	Water Buckets, Spout Type
3	Water Drain Pan
13	50' Air Hose
1	Air Nozzle
44	Fender Covers
3	Caulking Guns
4	Drop Cords
4	Parts Washers
8	Air Hoses
3	Sun Vacuum Gauge
2	Welding Googles
2	Brake Bleeders
1	Oil Can, 6 Qt.
1	Pair, Rubber Boots

7th and Bixel Branch
 Month Ending May 31, 1965
Inventory of Miscellaneous Items

Schedule K

Miscellaneous Items

<u>Quantity</u>	<u>Description</u>
3	Timing Lights
1	Ammco Brake Drum Mike
1	Sun Compression Tester
1	Kent Moore Standing Height Gage Kit
1	Kent Moore A.C. Tool Set
1	AC Leak Tester, Bernzomatic
2	Sun Vac. Tester
1	Mop Bucket
1	Water Bucket, 2 Gal.
1	Gas Tank Pump & Drum
1	Sun Timing Lite
1	Heater, Electric
1	Sun Vac. Gauge
1	Smog Tester
1	AC Spark Plug Analyzer
1	Sun Compression Tester
1	AC Air Cleaner Element Tester
2	Exhaust Hoses
1	Mop Presser, W400
1	Kent Moore Elec. Gas Per Mile Gauge
1	Sun Gas Tester, 44A15451
1	Carb. Stand
1	Speedometer Tester (Kent Moore)
1	Battery Box
4	Fender Covers
1	Pair, Rubber Boots
3	Elec. Soldering Irons
1	Clements Cad. Vac. Cleaner (Portable)
1	Axel Puller
1	Hub Puller
1	Snap on Torque Motor Inch Pounds
1	Sunction Pump Hand Type
2	Battery Jumper Cables
1	Simpson Ometer Mod. 260
3	Anti-Freeze Tester #180
1	Burroughs Short Tester
1	Sun Timing Light Ser. 34A55403
1	Elect. Soldering Iron 317B
1	AC Crankcase Vent Tester
1	Black & Decker Holesaw $\frac{7}{8}$
1	Sod. Iron Wellers, Mod. 0440
1	Sun Power Light 3005

7th and Bixel Branch
Month Ending May 31, 1965
Inventory of Miscellaneous Items

Schedule K

Miscellaneous Items

<u>Quantity</u>	<u>Description</u>
2	Wire Brush
17 Pkg.	Steel Wool #00
22 Rolls	Friction Tape
11 Rolls	Utility Cloth Grit 50
4 Rolls	Fine Flint Cloth
3, 1 lb. Rolls	Acid Cort Sol
3 Rolls	Resin Core Sol
2 Pkg.	Solder Spread
10	7½ Oz. Cans Super W/S Ads.
5	2" Roll Friction Tape
4, 5 Lb.	Cans Auto Glazing Dam.
4, 1 Qt.	Cans Fast Tack Adv.
4	Safety Masks
3	Drop Lights
3	Water Cans
11	Air Hoses
3	Creepers
1	Gas Can
22	Chains
2	Extention Cords
1	Blacksmith's Stand with Heavy Vise
2	T3 Head Lamp Aimers
1	Pencil Sharpener
1	Sun Battery Post Adaptor 7052-001
1	Sun Gen. Brush Tension Dial Indicator #2-1892
1	Sun Cell Tester, Mod. 230
1	Light Load Adaptor UMS A770
1	Pulley Puller, No No.
2	Liquid Thermometers
1	300# Air Pressure Gauge
1	Burroughs Short Tracer
2	Sun Daylight Lighter
8	Fender Covers
2	3½ Gal. Gas Can, Plastic
1	5 Gal. Gas Can, Metal
1	Spark Plug Cleaner
2	Push Brooms
5	30 Foot Water Hose
3	Floor Flood Lights, Portable
	Seller's Initial.....
	Buyer's Initial.....

EXHIBIT B

BB

RE 4980-A-2

This Sublease, dated, 1965, between GENERAL MOTORS CORPORATION, a Delaware Corporation (Cadillac Motor Car Division), with its principal office at 3044 West Grand Boulevard, Detroit, Michigan 48202, hereinafter called the Lessor, and hereinafter called the Lessee,

Witnesseth:

PREMISES: Lessor hereby lets to Lessee and Lessee hires from Lessor the following described premises: Located in Subdivision of Lot 1, Block 37, Hancock Survey, City of Los Angeles, California, as per Map recorded in Book 5, Page 566, Miscellaneous Records of Los Angeles County, State of California:

Lot 6 excepting the South 90 feet thereof and Lot 5 excepting the South 90 feet and the East 40 feet thereof, together with the use of the existing driveway over the Easterly 20 feet of the South 90 feet of Lot 6, in common with store tenants on the South 90 feet of said lots, containing 7,180 square feet plus seventy-five per cent (75%) of the driveway space, or 1,350 square feet, making a total area of 8,530 square feet. The property is graded, paved and fenced.

USE OF PREMISES: to be used only for parking for the term commencing June 1, 1965 and expiring May 31, 1967 at the rent

RENT: of \$325.00 for the month of June, 1965, and at the rate of \$425.00 per month commencing July 1, 1965, payable in equal or proportionate installments

of Dollars in advance on the first business day of each and every month during the term.

PAYMENT OF RENT: FIRST: To pay the rent as aforesaid to Argonaut Realty Division of General Motors Corporation.

REPAIRS: * * *

COMPLIANCE WITH REGULATIONS:
THIRD: To comply promptly with all laws, ordinances, requirements and regulations of the Federal, State, County, Municipal and other authorities, the fire insurance underwriters, and any insurance organizations or associations; except that Lessee shall not be required to make any alterations to the exterior of the building, or alterations of a structural nature.

VIEWING PREMISES: FOURTH: To use the premises exclusively for the purpose set forth herein and during the last three months of this lease, or any extension thereof, to permit the Lessor to display the usual: "To Let" signs and to show the premises to prospective tenants. Lessee further agrees that at any time during the term Lessor, Lessor's landlord, or their agents, may enter the premises for the purpose of examining the condition thereof, or to make repairs in any part of the building, but in making such reservation, Lessor does not assume any liability for the care or supervision of the premises of appurtenances.

ASSIGNMENT: FIFTH: That Lessee will not make or permit to be made any alterations or additions to said premises, nor assign, mortgage or pledge this lease, nor sublet the whole or any part of the premises without Lessor's written consent. Consent by Lessor shall apply solely to the particular transaction con-

sented to and shall not constitute a waiver by Lessor of the provisions of this lease.

INSURANCE: SIXTH: Lessee will not leave the premises unoccupied during the term, nor by any act of commission or omission cause an increase in the rate of insurance or the cancellation of any insurance policy. In the event of any increase in the rate of insurance caused by Lessee's occupancy, Lessee agrees to pay on demand the amount of any such increase, and in default of such payment, such amount may be added to the next installment of rent as additional rent. That Lessee shall furnish the Lessor with policies of public liability insurance issued by companies and in amounts satisfactory to Lessor.

SIGNS: SEVENTH: Lessee shall not install any awnings, advertisements or signs on any part of the premises without Lessor's written consent and will keep the sidewalks free from ice, snow and all obstructions.

UTILITIES: EIGHTH: Lessee will make its own arrangements for the supply of gas, electricity, water, fuel and the like and will pay for all such services.

IT IS MUTUALLY
COVENANTED AND AGREED:

INDEMNIFICATION: NINTH: Lessor shall not be responsible for any defect or change of condition in said premises, nor for any damage thereto, nor to any person, nor to goods or things contained therein due to any cause whatsoever except the act or negligence of the Lessor, and Lessee will indemnify Lessor from any claims, demands, and actions arising in connection with Lessee's use of the property, or the use by any person occupying said premises during the term hereof, or by

reason of any breach or non-performance of any covenant herein, or the violation of any law or regulation by Lessee.

FIRE CLAUSE: TENTH: If the premises shall be so damaged by fire, other casualty or act of the public enemy so as to be substantially destroyed, then this lease shall terminate and any unearned rent paid in advance by Lessee shall be apportioned and refunded to it, but in case the premises are not substantially destroyed, Lessor will endeavor to have its Lessor restore the premises and a just proportion of the rent shall abate according to the extent to which premises have been rendered untenable until premises have been restored. The Lessee agrees to give the Lessor immediate notice of any damage to the premises.

CANCELLATION: ELEVENTH: In case Lessee fails to perform or observe any of the covenants contained herein on its part to be observed and performed for ten (10) days after notice by Lessor, (a) Lessor may forthwith terminate or cancel this lease by notifying Lessee as hereinafter provided, and upon such termination or cancellation Lessee shall be liable to Lessor for all damages Lessor sustains by reason of Lessee's breach of covenant and of such termination or cancellation; or (b) Lessor may forthwith re-enter the premises without notice and upon re-entry may let the premises or any part thereof as agent for Lessee and receive the rent therefor, applying the same first to the payment of such expense as Lessor may be put to in entering and letting the premises and then to the payment of the rent and the fulfillment of Lessee's covenants hereunder; and Lessee agrees to pay and shall be liable for amounts equal to the several installments of rent as

they would, under the terms of this lease, become due if no default had occurred, whether the demised premises be re-let or remain vacant in whole or in part or for a period less than the remainder of the term, or for the whole thereof, but Lessee shall be entitled to be credited at the end of each month with any net amounts actually received by Lessor during such months for the use or occupancy of the demised premises or any part thereof, provided, however, that all sums paid and liabilities incurred by Lessor for any of the purposes aforesaid (which Lessee also agrees to pay and shall be liable for) shall have been first paid in full to Lessor, either directly by Lessee or out of moneys actually received for renting said demised premises after Lessor shall have received undisputed possession thereof, and the maintenance of any action or proceeding to recover possession of the premises or any installment or installments of rent or any other moneys that may be due or become due from Lessee to Lessor shall not preclude Lessor from thereafter instituting and maintaining subsequent actions or proceedings for the recovery of possession of the premises or of any subsequent payment or payments of rent or any other moneys that may be due or become due from Lessee or Lessor. A waiver by Lessor of any breach or breaches by Lessee of any one or more of the covenants or conditions hereof shall not bar forfeiture or any other rights or remedies of Lessor for any subsequent breach of any such or other covenants and conditions.

ADDITIONAL RENT: TWELFTH: If Lessor shall make any expenditure for which Lessee is responsible, or if Lessee shall fail to make any payment which Lessee is obliged to make hereunder, then the amount

thereof may at Lessor's option be added to any installment of rent then due or thereafter becoming due.

CONDEMNATION: THIRTEENTH: In the event the premises or any part thereof are taken or condemned for a temporary or permanent public or quasi-public use, Lessor may at its option terminate this lease and in such event any unearned rent paid in advance shall be returned to Lessee.

DEMOLITION: * * *

NOTICES: FIFTEENTH: That all notices to be given hereunder by either party shall be in writing and given by personal delivery to the Lessee or to one of the executive officers of the Lessor or shall be sent by registered mail addressed to the party intended to be notified at the post office address of such party last known to the party giving such notice and notice given as aforesaid shall be a sufficient service thereof. Provided, however, that it is mutually agreed that the Lessor appoints the Manager and the Assistant Secretaries of Argonaut Realty Division of General Motors Corporation, Argonaut Building, Detroit, Michigan, as its agents and that any one of them may give all notices and receive all notices to be given hereunder, and may receive the rent, and notices shall be sent to any one of said agents and not otherwise. The right is hereby reserved by the Lessor to countermand such appointments and make others consistent herewith, due notice of which shall be given by the Lessor to the Lessee.

TERMINATION: SIXTEENTH: If at any time proceedings in bankruptcy, or pursuant to any other act for the relief of debtors, shall be instituted by or against Lessee, or if Lessee shall compound Lessee's debts or assign over Lessee's estate or effects for pay-

ment thereof, or if any execution shall issue against Lessee or any of Lessee's effects whatsoever, or if a receiver or trustee shall be appointed of Lessee's property, or if this lease shall by operation of law, devolve upon or pass to any person or persons other than Lessee personally, then and in each of said cases, Lessor may terminate this lease forthwith by notifying Lessee as herein provided. Upon such termination all sums due and payable or to become due and payable by Lessee shall at once become due and payable.

SUBLEASE: SEVENTEENTH: This is a sublease and the Lessor's interest in the premises is as Lessee under an underlying lease made by MELVIN H. STARK and HELEN STARK, dated June 20, 1955, a copy of which, initialed for identification, is attached hereto. This sublease is expressly made subject to all the terms and conditions of said underlying lease and the Lessee agrees to use the premises in accordance with the terms of said underlying lease and not do or omit to do anything which will breach any of the terms thereof. If said underlying lease is terminated, this sublease shall terminate simultaneously and any unearned rent paid in advance shall be refunded to the Lessee.

* * *

QUIET POSSESSION: EIGHTEENTH: Lessor hereby covenants that Lessee upon paying the rent as herein reserved and performing all the covenants and agreements herein contained on the part of the Lessee may quietly enjoy the premises, except as herein otherwise provided and subject, however, to the terms of the lease to Lessor, and to the terms of any mortgages which may now or hereafter affect the premises.

NINETEENTH: That the Lessee is to maintain the fencing of the demised premises, as well as the paving of the rear portion and bear the expense of maintaining the driveway paving to the extent of seventy-five per cent (75%) of the cost of such maintenance.

TWENTIETH: In the event that Lessee's Cadillac Dealer Selling Agreement is terminated or in the event that the premises are used for purposes other than the sale or servicing of General Motors Corporation's products, then the Lessor may cancel this Sublease by giving Lessee at least five (5) days' prior written notice.

TWENTY-FIRST: The Lessor and the Lessee waive all rights, each against the other, for damages caused by fire or other perils covered by insurance where such damages are sustained in connection with the occupancy of the leased premises.

The covenants and agreements contained herein are binding upon the parties hereto and their respective successors, legal representatives and assigns.

Witness the signatures and seals of the above parties.

GENERAL MOTORS
CORPORATION
(Cadillac Motor Car Division)

By

.....
Vice President

ATTEST

.....
Assistant Secretary

CONSENT

MELVIN H. STARK and HELEN STARK, the Lessors under the underlying Lease dated June 20, 1955, and referred to in the within Sublease dated, 1965, hereby consent to the making of the within Sublease with the express understanding that such consent shall not operate to release General Motors Corporation from any of the Lessee's covenants in the underlying Lease.

Dated

In the presence of:

..... L.S.
MELVIN H. STARK

..... L.S.
HELEN STARK

Admitted in Evidence 2-24-66.

GENERAL COUNSEL'S EXHIBIT No. 14-C.

Assignment of Agreement

KNOW that for a valuable consideration the undersigned herewith assigns to Thomas Cadillac, Inc., a California corporation, any and all rights and delegates any and all obligations that undersigned has under an agreement dated May 11, 1965, between the undersigned and General Motors Corporation (Cadillac Motor Car Division), being an agreement to purchase certain of the assets and to lease and sublease, as the case may be, certain premises used by Cadillac Motor Car Division in the operation of its branch retail store at 1076 West Seventh Street, Los Angeles, California.

The undersigned warrants that he has good and complete right, title and interest in the said agreement which he is passing by this assignment.

WITNESS the execution of this instrument on the 7 day of June 1965.

/s/ [Illegible]

Witness

/s/ LaRue C. Thomas

The foregoing assignment is hereby accepted this 9 day of June 1965.

/s/ [Illegible]

Witness

THOMAS CADILLAC, INC.

/s/ By [Illegible]

The consent of the undersigned to the foregoing assignment is hereby given this day of June 1965.

/s/ [Illegible]

Witness

GENERAL MOTORS
CORPORATION
(CADILLAC MOTOR CAR
DIVISION)

/s/ By F. T. HOPKINS
Attorney-in-Fact

Admitted in Evidence 2-24-66.

GENERAL COUNSEL'S EXHIBIT No. 14-D.

ASSIGNMENT

KNOW that GENERAL MOTORS CORPORATION (Cadillac Motor Car Division), a Delaware corporation, pursuant to and subject to Agreement dated May 11, 1965 between General Motors Corporation (Cadillac Motor Car Division), as Seller, and LaRue C. Thomas, a Buyer, which Agreement was assigned by LaRue C. Thomas to Thomas Cadillac, Inc., a California Corporation, and in consideration of the sum of to it in hand paid by Thomas Cadillac, Inc., the receipt whereof is hereby acknowledged, and in consideration of the undertaking by Thomas Cadillac, Inc. of the obligations hereinafter set forth, on its part to be performed, has assigned, bargained, sold, delivered and set over and by these presents does assign, bargain, sell, deliver and set over to Thomas Cadillac, Inc. all the right, title and interest of General Motors Corporation (Cadillac Motor Car Division) in and to the property, contracts, claims, orders and other interests described in the annexed schedules and arising out of the Cadillac retail sales and service operations conducted by General Motors Corporation (Cadillac Motor Car Division) at 1076 West Seventh Street, Los Angeles, California, to have and to hold the same forever.

The said assets and rights are described in the following schedules which are incorporated herein and made a part hereof, to wit:

Schedule A—Accounts Receivable.

Schedule B—Unfilled Retail New Car Orders With
Customers Cash Deposits Thereon.

Schedule C—Sublet Repairs and Work-in-Process.

Schedule D—Prepaid Taxes.

The said General Motors Corporation (Cadillac Motor Car Division) does hereby constitute and appoint Thomas Cadillac, Inc. with power of substitution to be its attorney, irrevocable in the premises, to do and perform all acts, matters and things touching the premises, in like manner to all intents and purposes as it could do if personally present.

The said General Motors Corporation (Cadillac Motor Car Division) does hereby for itself, its successors and assigns, covenant with the said Thomas Cadillac, Inc., its successors and assigns, that the said several debts and obligations set out in the annexed schedules are still due and owing to it from the several debtors and obligors set out therein, respectively, and that the customers deposits herewith assigned constitute the full unearned amount of the deposits received from such customers by General Motors Corporation (Cadillac Motor Car Division); and that it has good right to sell and assign all of said properties, claims and interests unto the said Thomas Cadillac, Inc. in the manner aforesaid; and that it, the said General Motors Corporation (Cadillac Motor Car Division), its successors or assigns, will not at any time hereinafter, receive the said debts or some or any part thereof, nor revoke the power of attorney hereinbefore given, or do any act whereby the said Thomas Cadillac, Inc., its successors or assigns, may be prevented or hindered from enforcing any of the assigned obligations or payments of any of the assigned debts and that it will, upon the request of Thomas Cadillac, Inc., from time to time, execute and deliver such further instruments as may by said Thomas Cadillac, Inc. be reasonably deemed proper or

necessary for the more effective vesting in Thomas Cadillac, Inc. of the interests intended to be assigned.

The said Thomas Cadillac, Inc. assumes all the obligations of General Motors Corporation (Cadillac Motor Car Division) under all the contracts and arrangements set forth in the annexed schedules in accordance with the terms of the sample contracts and forms to such schedules annexed and in accordance with the aforesaid Agreement dated May 11, 1965, and undertakes and agrees fully to perform and discharge all obligations and liabilities set forth therein and to indemnify General Motors Corporation (Cadillac Motor Car Division) with respect thereto.

IT WITNESS WHEREOF, General Motors Corporation (Cadillac Motor Car Division) has caused these presents to be executed by its duly authorized representative effective as of the first day of June, 1965, and Thomas Cadillac, Inc. has caused these presents to be executed by its duly authorized officer effective as of the first day of June, 1965.

Witnessed by:

/s/ [Illegible]

/s/ [Illegible]

Witnessed by:

/s/ [Illegible]

/s/ A. M. Long

GENERAL MOTORS
CORPORATION
(Cadillac Motor Car Division)

/s/ By F. T. Hopkins

Attorney-in-Fact

THOMAS CADILLAC, INC.

/s/ By LARUE C. THOMAS

LaRue C. Thomas

President

State of California, County of Los Angeles—ss.

On this 7 day of June, 1965, before me personally appeared F. T. Hopkins, to me known, who, being by me duly sworn, did depose and say that he is the Attorney-in-Fact of General Motors Corporation (Cadillac Motor Car Division), the corporation described in and who executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

/s/ Lois L. Jackson

Notary Public in and for said county
and State

My Commission Expires May 3, 1968.

LOIS L. JACKSON

State of California, County of Los Angeles—ss.

On this 7th day of June, 1965 before me personally appeared LaRue C. Thomas, to me known, who, being by me duly sworn, did depose and say that he is the President of Thomas Cadillac, Inc., a California corporation, the corporation described in and who executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; that he signed his name thereto by like order.

/s/ Lois L. Jackson

Notary Public in and for said
county and state

My Commission Expires May 3, 1968.

LOIS L. JACKSON

796 *International Assn. of Machinists, etc. vs.*

Summary of Schedules for Assignment Dated June 1,
1965, by General Motors Corporation (Cadillac
Motor Car Division) to Thomas Cadillac, Inc.

<u>Schedule</u>	<u>Amount</u>
-----------------	---------------

Schedule A—Accounts Receivable	
--------------------------------	--

Schedule C—Sublet Repairs and Work-in-Process	
--	--

Schedule D—Prepaid Taxes	
--------------------------	--

Total

Less

Schedule B—Unfilled Retail New Car Orders
With Customers' Cash Deposits
Thereon

Net Total

.....Seller's Initials

.....Buyer's Initials

Schedule A to Assignment Dated June 1, 1965, Exe-
cuted between General Motors Corporation (Cadil-
lac Motor Car Division) and Thomas Cadillac, Inc.

Schedule A

Accounts Receivable

Total Amount

Detailed Schedule has been initiated
by and delivered to both parties.

.....Seller's Initials

.....Buyer's Initials

Schedule B to Assignment Dated
June 1, 1965, Executed Between
General Motors Corporation
(Cadillac Motor Car Division)
and Thomas Cadillac, Inc.

Schedule B

Unfilled Retail New Car Orders
With Customers' Cash Deposits Thereon

<u>Date</u>	<u>Name</u>	<u>Amount</u>
April 19, 1965	Alessandro Bernardini	
April 26, 1965	Boyer Brokerage Co., Inc.	
May 14, 1965	Thomas V. Cahill	
April 30, 1965	George W. Campbell M.D.	
April 15, 1965	Ralph A. or Isabelle Clements	
May 5, 1965	Carl Cohen	
April 24, 1965	Thomas Franklin	
April 7, 1965	Alvin Grantham	
May 1, 1965	Horace W. or Evelyn G. Jones	
May 6, 1965	Honore N. Levy	
April 23, 1965	Mike Lisizen	
March 27, 1965	Charles A. Lyons	
May 26, 1965	Clarence Martin	
May 7, 1965	Jewel Mitchell	
April 23, 1965	Lorraine O'Connell	
November 19, 1964	Raymond Paige	
May 13, 1965	Charles S. Raggie	
April 20, 1965	Walter S. Richardson	
March 10, 1965	Charles L. or Rena M. Rookstool	
May 7, 1965	Sloan's Dry Cleaners	
March 20, 1965	Wiley B. or Marie B. Tonnar	
March 16, 1965	Walter J. Turner	
May 12, 1965	Valcoa Construction & Investment	
April 12, 1965	Irvin H. Willett	
March 9, 1965	Mike C. Wojtasik	
May 25, 1965	Anthony F. York	

In consideration of the payment by General Motors Corporation (Cadillac Motor Car Division) to Thomas Cadillac, Inc. of the amounts deposited with General

Motors Corporation (Cadillac Motor Car Division) for or credited to the above-listed new car orders placed with General Motors Corporation (Cadillac Motor Car Division), Thomas Cadillac Inc. herewith undertakes General Motors Corporation's (Cadillac Motor Car Division) obligations under the above-listed new car orders upon the terms and conditions specified in the sample form of order attached hereto, initialed by the parties and made a part hereof.

.....Seller's Initials

.....Buyer's Initials

Schedule C to Assignment Dated
June 1, 1965, Executed Between
General Motors Corporation
(Cadillac Motor Car Division)
and Thomas Cadillac, Inc.

Schedule C

Sublet Repairs and Work-in-Proceess

Customer Name	Repair Order No.	Amount
United Western Radio & TV	B47621	
United Western Radio & TV	B47020	
Art Simpson	B45339	
Art Simpson	B44988	
Leo Rose	B46370	
William Randazzo	B48443	
M. Bertauche	B48346	
M. Bertauche	B48347	
David Blick	B47631	
David Blick	B47632	
David Blick	B47685	
David Blick	B47633	
Leslie Israal	B47726	
James Helmes M.D.	B47732	
James W. Gentry	B48356	
James W. Gentry	B48355	
Internationals Artist Ltd.	B47307	
Eskimo Radiator	B47010	
Eskimo Radiator	B47009	
Eskimo Radiator	B47008	
Eskimo Radiator	B47007	
Eskimo Radiator	B47011	
Lauro Janie	B47961	
Lauro Janie	B47357	
Lauro Janie	B47359	
Lauro Janie	B47356	
Lauro Janie	B47962	
Lauro Janie	B47358	
Lauro Janie	B47360	
Lauro Janie	B46600	
Daniel Velenzuela Gonzales	B47079	
Daniel Velenzuela Gonzales	B47080	
Daniel Velenzuela Gonzales	B47181	
Daniel Velenzuela Gonzales	B47182	

Total

.....Seller's Initials

.....Buyer's Initials

Schedule D to Assignment Dated
June 1, 1965, Executed Between
General Motors Corporation
(Cadillac Motor Car Division)
and Thomas Cadillac, Inc.

Schedule D
Prepaid Taxes

	Total
Los Angeles County Personal Property ('64-'65) Month of June, 1965.	

Los Angeles County Real Property ('64-'65) Month of June, 1965.	
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Admitted in Evidence 2-24-66.

GENERAL COUNSEL'S EXHIBIT No. 15.

AFFIDAVIT

I, Loyd E. Coats, residing at 5081 Tripoli Ave, Los Alamitos, phone Ge 1-6030, first having been sworn, depose and state I am the general [LEC] service manager of Thomas Cadillac Inc. at 7th and Bixel in Los Angeles. Before this I was the service manager of Cecil L. Thomas & Sons, Inc. in Harbor City. I was service manager for Cecil L. Thomas for over 5 years. As service manager I was in charge of all the shop employees there. The shop in Harbor City was under union contract. Our relationship with the Union was very good. I never had any union problems there.

I was brought over by Mr. Thomas to take charge of the complete service operations which includes repairs of all automobiles, maintenance services, body work, new car get ready, warranty, building mainte-

APPENDIX OF THE PARTIES.

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21,972

INTERNATIONAL ASSOCIATION OF MACHINISTS,
DISTRICT LODGE 94, AFL-CIO; and AUTOMOTIVE
MARINE, PRODUCTION FINISHERS, EQUIPMENT,
MAINTENANCE AND PUBLIC SERVICE PAINTERS
LOCAL UNION 1798, BROTHERHOOD OF PAINTERS,
DECORATORS AND PAPERHANGERS OF AMERICA,
AFL-CIO,

Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent,

THOMAS CADILLAC, INC., and LOU EHLERS CAD-
ILLAC,

Intervenors.

Volume III of 3 Volumes.

United States Court of Appeals

for the

HERBERT M. ANSELL,
1336 Wilshire Boulevard,
Los Angeles, California 90017,

ABE LEVY,
1520 Wilshire Boulevard,
Los Angeles, California 90017,

PLATO E. PAPPS,
1300 Connecticut Avenue,
Washington, D. C.,
Attorneys for Petitioners.

FILED SEP 13 1968

Nathan J. Vannoy
CLERK

APPENDIX OF THE PARTIES.

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21,972

INTERNATIONAL ASSOCIATION OF MACHINISTS,
DISTRICT LODGE 94, AFL-CIO; and AUTOMOTIVE
MARINE, PRODUCTION FINISHERS, EQUIPMENT,
MAINTENANCE AND PUBLIC SERVICE PAINTERS
LOCAL UNION 1798, BROTHERHOOD OF PAINTERS,
DECORATORS AND PAPERHANGERS OF AMERICA,
AFL-CIO,

Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent,

THOMAS CADILLAC, INC., and LOU EHLERS CAD-
ILLAC,

Intervenors.

Volume III of 3 Volumes.

nance. I generally supervise the shop employees through the supervisors who are directly under me.

Before leaving our Harbor City location, Mr. LaRue Thomas called all the service dep't. employees and offered them jobs at this location. I also asked the individual employees to come. All refused at that time. A couple have come up since we opened up here. They are Julius Jenkins and Hollis Turner, both polishers. These are the only two.

Mr. Thomas told me I was responsible for getting an adequate staff together for the work. He told me it was my department and I ran it. We did not discuss what criteria I should use. Unions were not discussed at all. There were close to a hundred service dept. employees in GM's service dep't. including supervisors. I interviewed every one of them to determine their suitability. I judged on his attitude, belligerency, cooperativeness etc., his experience and his age the last in one or two cases. I did not question them concerning union attitudes. I was not concerned about this.

About the middle of the third week in May, applications were handed out to each employee through their foremen. Applications were also given to the foremen. I received some applications back but before I had a chance to review them, Tom Cliff, the GM comptroller, called me and said that handing out the applications was in direct violation of the agreement, so the Union had said, and he demanded that I hand over the applications to him which I did. I was further informed by him that I would not be allowed to interview any of the shop employees with the exception of supervisors until he notified me it was O.K.

The Monday of the last week in May I got the O.K. from Tom Cliff. I started interviewing all mechanics, body men, painters, etc. immediately. I interviewed all that week through Friday. As a result of these interviews, I hired fifteen shop employees who were former employees of Cadillac Motors. I told the other employees that if they had not heard from me by Wednesday, June 2, that they could consider that they would not be called. On June 7 when we opened the doors of our service dep't. there were fifteen employees who were formerly employed by Cadillac Motor Co. Since June 7, three former GM employees have been hired. They are Rob't. Peterson and the two Gonzalez brothers, Mene and Xavier. We also offered employment to a bumper and grill man, Mike Wogee, who refused because he wanted to retain his seniority with GM.

On June 7, I had a total of 47 hourly shop employees. Bill Hinman, my assistant, had been a service manager at a Pontiac dealership in Compton, and he brought six men with him. The others came to apply through word of mouth advertising and from employment agencies. I interviewed these applicants about the same period of time I was interviewing the Cadillac Motors employees.

I knew I would need employees from outside sources because the Cadillac Motors agency at 7th and Bixel had a poor reputation for service. I had heard this at the Harbor City location from customers of 7th and Bixel. I also felt there would be some who would not meet the qualifications I set.

I hired my supervisors on the same basis. As already stated, I hired my assistant, Mr. Hinman, from

the outside. [Portion omitted—LEC] Cadillac had a total of eight shop foremen. I decided that five would do. Of the five whom I employed, four were with Cadillac Motor Car Division. Three performed the same function for me as they had for Cadillac. One, Bill Jest, had been a service salesman with Cadillac.

My method of operation differs from Cadillac. Cadillac had many more channels to go through in order to get something done. There is a greater emphasis on quality and on satisfaction to the customer. The foremen are held personally responsible for work performed by the employees. I personally check every floor each day to see how things are going on and so does my assistant. Bill Hinman and myself are kept apprised of complaints and handle them personally.

When I spoke to the applicants for hire, I gave them the company policy, the pay rates, fringe benefits, working hours etc. I made it clear to G.M. employees that we were not taking over any GM policies or programs. What we offered was strictly the Thomas Cadillac Inc. policy and program.

Loyd E. Coats

Subscribed and sworn before me this 16th day of Aug., 1965, at Los Angeles, Calif.

Bd. Agent.

Admitted in Evidence 2-24-66.

GENERAL COUNSEL'S EXHIBIT No. 16.

AFFIDAVIT

I, Irving C. Graham, residing at 11420 Hemlock, El Monte, phone GI4-6438, having been sworn, depose and state: I am service manager for Lou Ehlers Cadillac. I have held this position since June 1. Before that I was shop foreman, second floor for the Cadillac Motor Car Division, Wilshire sub-branch. I was foreman at Wilshire from August, 1959 on until my termination as of May 28, 1965. I was transferred to Wilshire from the 7th & Bixel location.

As foreman for GM I interviewed prospective workers and see to it that the shop was run in an orderly manner under the supervision of the service manager and to control the amount of work to be done in one day, the quality of the workmanship, and to train new employees, and see that the work was done at minimum expense to owners.

Our employees were under Union contract. I participated on occasion in labor-management matters. Almost entirely it had to do with oral gripes and rarely was reduced to written grievance. My relationship with the shop committee was excellent and I had no problem with them.

I first heard about the impending sale of the Cadillac agencies to independent dealers about the middle of April at a meeting of supervision in which it was announced by Pais and other GM management representatives. He said that GM was terminating its branches as of May 28. He said that all the employees in the two branches would be terminated as of that date. He said there would be literature coming out con-

cerning the possibilities of future employment with GM elsewhere, that there would be factory representatives coming out for personal interviews. I had nothing to do with informing the employees in the shop of these developments. Walter Baeseman, the service manager, did.

About a week later I was interviewed by a factory representative, I don't recall by whom. He told me that applications which I had already made with GM had been circularized throughout different divisions of GM. That was about all.

I first met with Mr. Ehlers sometime during the third week in May. It was a private conversation at the Wilshire branch. Mr. Ehlers said that after reviewing my qualifications he would like to offer me the position of second floor foreman, the same job I had held with GM. I accepted it. I also told him that if GM offered me a job I found acceptable at some other location, I would give him 2 weeks notice. I understood I was coming in as a new hire by Ehlers. We discussed the conditions of my employment. Insofar as they related to my responsibilities they would be about the same. We did not discuss anything other than my own personal situation.

We met again two days later. Mr. Baeseman was there at the start. At this time I was offered the position of service manager since Baeseman had decided not to continue on as service manager. We then discussed my duties as service manager. My duties and responsibilities were to be pretty much the same as those performed by Baeseman under GM.

We met again that evening, this was about May 20 or 21. Mr. Baeseman was again present. Mr. Ehlers

stated that he wanted certain qualifications in his employees. He said that he wanted the best, most qualified and most versatile employees. He stressed attitude. He said nothing about union. No mention was made by any of us with respect to unions or union attitudes. He said he was leaving it up to my judgment who to hire under this qualification's set forth. He asked me to make up a list of those employees I was prepared to hire of the present complement of employees. I did not make a list at that time. I understand he asked Baeseman to make up a list prior to this meeting.

I make my list up that same night at home. I was thoroughly familiar with the work and capabilities of all the employees in the shop at Wilshire in my capacity as general foreman directly under Baeseman. I selected the employees according to the directives laid down by Mr. Ehlers. No union considerations entered into my selection. I submitted my list to Mr. Ehlers the next morning, I believe. I submitted eleven names. About May 25th Mr. Ehlers told me I could hire them.

On May 28 starting about 11 A.M. I called in each employee individually whom I had recommended for hire. I told them all the same thing. I told them what the wage scale would be and the fringe benefits. I told each that he was one of a select group of employees to be hired by Ehlers. I told them that they would have to keep a clean shop and keep their own areas clean, that if the need arose they be willing to spend a little extra time over and above the eight hours to complete a job. I told them that Ehlers insisted on quality workmanship and customer satisfaction at the least expense and time involved. I asked each of them if

he was willing to work under the conditions as stated. All accepted.

Approximately May 20 or 21 I had called the employees on the second floor together. The first floor foreman, Ernie Morris, did the same for his group. I told them if they wanted to be considered for hire by Mr. Lou Ehlers that they could obtain application from Mr. Bennett, the general sales manager for Mr. Ehlers. That was all. This was before I made up my list. I made my list without reference to these applications.

About 4:45 P.M. I called all the shop employees together on the second floor. I told them that a certain number of employees had been hired by Mr. Ehlers and told the rest of them were still being under consideration but no definite decision had been made. I said they would be contacted by phone if they were to be hired by Tom Ehlers. I said that, if they wished, they could remove their personal tools that day. That was all I said. I was asked if I knew how long it would be before they could expect a call. I said I could not say. In fact I never called any of them.

Quite a few called me after June 1. One was Dean Conrad, a glass and rattle man. All they asked was whether I had heard any more about them being hired or had decided. I told them all the first time they called that they were still being considered. After the first week any of those who called I said there was no hope.

Prior to June 1 Ehlers had placed an ad in the newspaper for the entire week, I believe. Applicants had come in response to the ad. I had interviewed them. I had hired approximately seventeen by May 29. A few of

the seventeen came in as a result of personal recommendation by employees and were hired. In more of my interviews with any of the applicants did I ever ask about their union application or attitudes. Each one was required to fill out an application form for employment. The questions I asked concerned their competence and work habits and attitudes. I have hired a few other employees since June 1. I have never at any time been concerned with union affiliation or attitude of applicants or employees.

/s/ Erving C. Graham

Subscribed and sworn before me this 5th day of August, 1965, at Los Angeles, Calif.

[ILLEGIBLE]

Bd. Agent

Admitted in Evidence 2-24-66.

GENERAL COUNSEL'S EXHIBIT No. 17.

Superior Court of the State of California
for the County of Los Angeles.

In the Matter of the Petition of Herbert A. Cooksey, etc., et al., Petitioners, vs. Cadillac Motor Car Division of General Motors Corporation, et al., Respondents. No. 863,286.

DEPOSITION of LOYD E. COATS,

taken at 1076 West Seventh Street, Los Angeles, California, at 2:00 o'clock p.m., on Thursday, August 19, 1965, before WILLARD HAAS, CSR, Notary Public. [1]

Appearances of Counsel:

For the Petitioners: Richman, Garrett & Ansell, by: Herbert M. Ansell, 1325 Wilshire Boulevard, Los Angeles, California.

For the Thomas Cadillac, Inc.: H. Burdette Fredricks, 3600 Wilshire Boulevard, Los Angeles, California.

For the Respondent General Motors Corporation, Cadillac Motor Car Division: Lawler, Felix & Hall, by: Richard D. DeLuce, 800 Standard Oil Building, Los Angeles, California. [2]

LOYD E. COATS,

having been first duly sworn, deposed and testified as follows:

Examination

By Mr. Ansell:

Q. Mr. Coats, what is your present address?

A. 5081 Tripoli Avenue, Los Alamitos, California.

(Deposition of Loyd E. Coats.)

Q. Where did you formerly work prior to coming to work at this establishment?

Mr. Fredericks: Immediately prior?

Mr. Ansell: Yes.

The Witness: To Thomas Cadillac, or do you mean Cecil Thomas & Sons?

Mr. Ansell: I think you have answered the question.

Q. Did you work for Cecil L. Thomas & Sons?

A. Yes. I worked for Cecil L. Thomas & Sons.

Q. That was your last employer before you became employed by Thomas Cadillac, Inc.; is that correct?

A. Right.

Q. Are you familiar with James Heathington?

A. James Heathington?

Q. Yes.

A. Yes. He is my shop foreman on the 7th and 8th floor.

Q. Do you know whether he was employed at this [3] establishment, that is, at this physical location, prior to June 1st, this year?

A. No, he was not.

Q. Do you know where he was employed?

A. Lamerdin Pontiac.

Q. As general service manager, can you tell us generally what your functions are?

A. Supervisor of the complete service department, and also including all of the building maintenance and men that are in our employ.

Q. Would any policy directives or policy changes come through your office?

A. Ninety-nine per cent of them, yes.

(Deposition of Loyd E. Coats.)

Q. Since June 1st, 1965 have you issued any kind of written policy memoranda in letter directives to the employees concerning mode of operation? A. No.

Q. Have you called any meetings of the employees in the shop, the maintenance employees? A. No.

Q. Have you ever had any discussions with the employees as a group in any regard at all since June 1st?

A. Just with the service salesmen and shop foremen.

Q. The service salesmen, you say? A. Yes.

[4]

Q. You mean the service writers? A. Yes.

Q. You mean you met with these people individually? A. No. As a group.

Q. Well, how many service writers are there?

A. Seven.

Q. What was the other category?

A. The shop foremen.

Q. His name is what?

A. There's several of them. There are many of them.

Q. You mean Mr. Heathington, Mr. Holderman, Mr. Iest, Mr. Meckool and Mr. Dickerson?

A. Iest, that is, I-e-s-t.

Q. All right. Do you recall when that meeting occurred? A. There has been several of them.

Q. Is it a fairly regular type of thing?

A. Yes.

Q. How frequently do you meet?

A. About once every other week.

Q. What is the purpose of these meetings?

(Deposition of Loyd E. Coats.)

A. Oh, in ironing out several of the small difficulties that we have as to routing the work through the shop. I should include the control tower operators are in this, too.

Q. How many of those are there? [5]

A. Two.

Q. You mentioned the routing and channeling of work as being a topic? A. Yes.

Q. Anything else?

A. Keeping them advised on bulletin, service bulletins from the factory that we get, change in factory policies as to the warranty. Sometimes Cadillac will extend a policy such as '63 and '64 heater cords. The policy has been extended to 36 months or 36,000 miles. Things of this nature.

Q. Anything else that you can think of?

A. That is about it.

Q. Has there been any particular change in operation that you have put into effect in some regard in the shop?

Mr. Fredricks: I think you had better be a little more specific on that, Herb. It is pretty much of a general question.

Mr. Ansell: It is a general question.

Mr. Fredricks: I don't know what you mean. It is unintelligible to me.

Mr. DeLuce: Also, it assumes the witness knows whatever was done here before, which may not be the case.

Mr. Ansell: Q. Let me ask the question of you this way. Have you, yourself, Mr. Coats, had occasion to announce some policy that you want carried out

(Deposition of Loyd E. Coats.)

through your foremen [6] at one of these meetings every couple of weeks?

A. No. Not a policy. A procedure, yes.

Q. Can you tell us, can you give us some idea of what we are talking about?

A. Well, we have changed the method of the service salesman writing up the order and designating where the car goes. Now they write the order and it gets sent to the tower, and the tower routes the car through the building or to whatever facility it has to go to, to its finalization.

Q. Rather than—

A. Rather than the service salesman routing the car.

Q. Do you know whether this was the procedure that was followed prior to June the 1st, or was it something else?

Mr. Fredricks: If you know.

Mr. Ansell: Yes. I recognize that.

The Witness: Yes. I think the tower was operating more or less as an answering service rather than as a tower. The service salesman would write the order up and designate where they wanted the car to go, either to the annex, the basement, six, seven, eighth floor, what have you. Now they write the order, it goes to the tower, and the tower designates where the car goes.

Mr. Ansell: Q. Is there any other new policy that you have enunciated since June 1st? [7]

A. No.

Q. Is that about it? A. Yes.

Q. Has there been in effect some type of seniority program at this establishment since June the 1st?

(Deposition of Loyd E. Coats.)

A. No.

Q. Is there any policy that you know of at this establishment concerning, for example, lay-offs. If a lay-off is needed, is there any type of procedure to be followed? A. No, there is not.

Q. All right.

Mr. Fredricks: I think it assumes a fact not in evidence.

Mr. Ansell: What is that?

Mr. Fredricks: I don't know whether there has or has not been lay-offs.

Mr. Ansell: I didn't ask him that. He answered the question. I asked him if there was some policy as to how lay-offs would be handled.

Mr. Fredricks: If there hadn't been, how can there be a policy?

Mr. Ansell: There might be. They might make plans when lay-offs occur, but apparently there has been none.

Q. Do you know if there is any particular policy insofar as wage increases are concerned?

A. No, I don't. [8]

Q. That is, whether there is some type of increase automatically after a certain period of time?

A. No, because everybody is on an incentive here, and nothing has been discussed about an increase.

Q. Well, when you say incentive, I understand that the shop employees get paid a certain designated flat rate per hour, an hourly rate that is set by this business concern. A. Yes.

Q. Then they just get paid for the number of hours that they work; is that correct?

(Deposition of Loyd E. Coats.)

A. No. They get paid for the number of hours that they log.

Q. On a particular job?

A. Right. For example, it is—well, roughly, two hours we will say to put a water pump in an air-conditioned Cadillac. If he does it in one hour he gets paid for two hours.

Q. I see. He gets the time allowed regardless of how long it takes him to do it? A. Yes.

Q. That is what you mean by incentive?

A. Right.

Q. Is there any vacation plan that you know of for the employees? A. Yes. [9]

Q. How does that work?

A. Two weeks with pay after one year.

Q. Does that increase as time goes on?

A. No, it does not.

Q. How about holidays?

Mr. Fredricks: I don't know what fringe benefits have to do with this. You are not negotiating a contract.

(A discussion was had off the record.)

Mr. Fredricks: What is the materiality, in your opinion?

Mr. Ansell: I think it is somewhat descriptive of the operation here as it now exists, as it has existed since June the 1st. I think it does bear on the overall issue of successor employer.

Mr. Fredricks: How?

Mr. Ansell: Well, I think it does. I think all of the practices, the policies are relevant. This is the thing we have to evaluate.

(Deposition of Loyd E. Coats.)

Mr. DeLuce: What is it designed to show?

Mr. Ansell: It is designed to clarify the issue that is involved in this case as to whether this Thomas Cadillac, Inc. is a successor employer of Cadillac.

Mr. DeLuce: If I understand it correctly, your argument would be what, if it had certain things that were similar to the way it was operated previously, what would be your argument? [10]

Mr. Ansell: I am going to withdraw the question.

(A discussion was had off the record.)

Mr. Ansell: In the declaration, page 1, line 27, starting with "I examined the customer complaint files."

Mr. Fredricks: "Of the Cadillac Motor Car Division."

Mr. Ansell: I thought you were going to show it to him.

Mr. Fredricks: Come here, Loyd, and read this clause along with Herb, starting with "I examined the"—

Mr. Ansell: "That I examined the customer complaint files of the Cadillac Motor Car Division of GMC to determine the nature of customer complaints, the extent of customer complaint and the best service department personnel from a customer relation standpoint."

Q. Is there a specific complaint file as such set aside? A. Yes. All complaints are filed.

Q. Is it put into a folder called "Customer Complaints"?

A. Each customer complaint is filed under a separate folder.

Q. Under a separate folder? A. Yes.

(Deposition of Loyd E. Coats.)

Q. How would you determine the kind of folder to file a complaint under?

A. It is in a Manila folder. [11]

Q. I gather the complaints are not lumped together in one file? A. No.

Q. How are the files broken down, under what kind of category?

A. There is only one category, customer complaint.

Q. Then there is one file for customer complaints?

A. Right. I see what you mean. I am sorry.

Q. If you went to the customer complaints and you pulled out one Manila file you would have all the customer complaints?

A. No. You would find folders containing customer complaints. Each customer complaint is filed by us numerically and it is in a folder. For example. Burt Fredricks would be under Fredricks, and his complaint would be in a separate Manila folder.

Q. That separate folder is set up for each individual that lodges a complaint? A. Yes.

Q. Are those files available? Are they present here on the premises? A. Yes.

Q. Do you know how far back these customer complaints go? A. I can find out.

Q. Sure. [12]

Mr. Fredricks: If you know, Loyd.

Mr. Ansell: Q. Approximately. A. A year.

Q. About a year? A. Approximately.

Q. Were these files set up by Thomas Cadillac, Inc., or were they started by Cadillac Motor Car Division?

A. Cadillac Motor Car Division.

(Deposition of Loyd E. Coats.)

Q. Do you recall the number of complaints that you found when you went through the files?

A. Not offhand, no.

Q. On any of these complaints that you recall looking at was there a complaint directed against a specific employee?

A. No, not that I recall.

Q. Can you think at this time, in your own mind, as to any type of complaint that you found when you examined the files?

A. Most of it was poor service.

Q. You interviewed all of the persons that were subsequently hired after June 1st?

A. Yes, I did.

Q. Was there any particular criteria that you used in your own mind to judge who would be suitable for employment at Thomas Cadillac and who would not?

A. Well, we judged them—the majority of them we [13] judged on their attitude, their experience, their know-how. In two cases, their age. There were two men 64 years old, and this meant a great deal. They were getting ready for retirement.

Q. Were these two individuals hired by you?

A. No, they were not.

Q. They were not?

A. No.

Q. You say on page 2 of your declaration, and I am looking now starting with line 5, this is after you recite that you hired approximately 16 persons who formerly worked for Cadillac, you then go on to say "And that in my opinion the men hired were the best qualified mechanics and shop personnel to perform the respective service jobs according to the standards set by Thomas Cadillac, as distinguished from the standards of Cadillac Motor Car Division of GMC."

(Deposition of Loyd E. Coats.)

What standards were you referring to in particular of Thomas Cadillac, Inc. that were different than Cadillac Motor Car Division?

A. Well, as far as a written standard, there are none. We are looking for loyal men, honest men, sober men, men with good mechanical background. That lumps it up.

Q. Let me ask you this: Do you recall at this time how many men you interviewed that had formerly worked for Cadillac at this location?

A. Not exactly. I would guess around a hundred.
[14]

Q. In other words, substantially all of the crew that had worked here before?

A. Everybody.

Q. Everybody?

A. Everybody in the service department, I interviewed.

Q. Well, let me ask you this: Did you find any persons who were not sober?

A. No.

Q. Did you find any whose loyalty you questioned?

A. Not at that time.

Q. Did you find any that lacked a thorough background on Cadillac automobiles?

A. Yes.

Q. Do you recall the names of any persons, of such persons that you made such a determination?

A. Offhand I can't, no.

Q. Well, let me ask you this specifically. Did you ascertain from your interviews that there were any persons here at this location in the service department who had not gone through Cadillac school, Cadillac training school?

A. No. I think all of them have.

Q. I see.

(Deposition of Loyd E. Coats.)

Mr. Fredricks: What classification of employees are you talking about? Mechanics?

Mr. Ansell: I was talking about service and maintenance [15] in general, all service and maintenance.

The Witness: Well, there would be nobody in maintenance that would go to school.

Mr. Ansell: Q. Just the mechanics?

A. Right. Mechanics, shop foremen and service advisors.

Q. Those people, so far as you could ascertain, had all gone through Cadillac training school?

A. Of one kind or another.

Q. Of the total number of employees that you hired on or about June 1, 1965 how many had had prior experience working on Cadillacs?

A. I don't even know how many we started out with.

Q. Let us see if Mr. Thomas makes an approximation here.

Well, as of this date, he says the total number of shop employees employed by Thomas Cadillac is approximately 63. A. As of this date.

Q. Well, this— A. Was that June 1?

Q. He says as of July 9, as I understood. He is speaking as of that date, approximately 63.

Mr. Fredricks: That includes all service department employees, you understand, maintenance, too.

Mr. Ansell: I understand that. [16]

Mr. Fredricks: Maybe we better rephrase the question then.

Mr. Ansell: Q. Let me ask you this: Of the approximately 63 employees who were on the payroll on or

(Deposition of Loyd E. Coats.)

about June 1, how many of them had worked on Cadillac automobiles prior to that day?

Mr. Fredricks: Herb, you see, the trouble with your question is that all of those people don't work on Cadillac automobiles.

The Witness: Yes, This is it. You are talking about service department employees, which includes shop foremen and everything like that.

Mr. Fredricks: Car jockeys, maintenance people, and so forth. That is what makes your question difficult to answer.

Mr. Ansell: Let me just break this down a little bit.

Q. On this list that has been furnished to me by Mr. Fredricks there is hourly employees presently on the rolls and on the rolls on June 7, '65, and there is listed some 17 mechanics.

Mr. Fredricks: Let him see the list, Herb. That might help him. He might know some of the names.

Mr. Ansell: Go ahead.

Q. I will ask you first whether it is substantially correct that as of June 1st or on or about June 1st there [17] were 17 mechanics on the payroll?

A. Right.

Q. How many of those persons had had previous Cadillac experience?

A. Of the 17, approximate, mechanics?

Q. Right. A. All of them.

Q. Do you know by looking at this list, can you tell us where each of the mechanics so listed had their previous experience in the Cadillac field?

A. All here, Cadillac motor car dealers.

(Deposition of Loyd E. Coats.)

Q. You are saying that 17 mechanics all previously worked for Cadillac? A. Yes.

Q. At this location? A. Yes.

(A discussion was had off the record.)

Mr. Ansell: Q. You list, for example, Theatris Bobbey. Do you know that person? He is listed as a mechanic here. Theatris Bobbey, B-o-b-b-e-y.

A. Yes.

Q. Do you know what this man's background is?

A. He is an undercoater.

Q. He is an undercoater? A. Yes.

Q. Do you know, did this man work at this location [18] prior to June 1? A. No, he did not.

Q. Do you know where he did come from?

A. I don't remember.

Q. Do you know whether it was a Cadillac agency?

A. I don't believe it was.

Q. There is listed, Marcel Bouchard, B-o-u-c-h-a-r-d. Do you know this person?

A. Yes, I know him.

Q. Did he work at this location prior—

A. No, he did not.

Q. Do you know where he came from?

A. I can't remember.

Q. Arthur Clayton, C-l-a-y-t-o-n. Do you know that person? A. I know him, yes.

Q. Did he work here prior to June 1?

A. No, he did not.

Q. Do you know where he came from?

A. I believe he came from Lamerdin Pontiac, but I am not sure.

(Deposition of Loyd E. Coats.)

Q. William Doutherd, D-o-u-t-h-e-r-d. Do you know this man? A. Yes.

Q. Did he work at this location prior?

A. No, he did not. [19]

Q. Do you know what his background has been?

A. No, I don't remember.

Q. Forrest Hickman, H-i-c-k-m-a-n. He did not work here, did he? A. No, he did not.

Q. Do you know where he came from?

A. Lamberdin Pontiac.

Q. Robert Keller; do you know that one?

A. Yes.

Q. Where did he come from?

A. I don't remember.

Q. John Listo; do you know that person?

A. That's a new one on me. I don't know.

Q. Dominic Palumbo? A. Yes.

Q. He did not work here prior to June 1?

A. No, he did not.

Q. Do you know where he came from?

A. Lamberdin Pontiac.

Q. George Payne, P-a-y-n-e. Do you know where he came from?

A. He was from Casa de Cadillac in Sherman Oaks.

(A discussion was had off the record.)

Mr. Ansell: Q. Robert Reggie, do you know that person?

A. I know him, but I don't even know what floor [20] he is working on.

(Deposition of Loyd E. Coats.)

Q. These persons that you have named as coming from the Pontiac agency, do you know whether these persons, any of these persons ever went through General Motors school of some sort?

A. Yes, they did.

Q. But so far as you know these persons did not work on Cadillacs? A. No.

Q. Aside from the two persons who you mentioned who were over 60 years of age, are there any others that you can think of that applied for work, that is, of the existing work force, that was here as of May 28, 1965, that you found not employable for one specific reason or another?

Mr. Fredricks: Let us clarify that question. It assumes a fact not in evidence. It assumes the two men 64 years of age applied for work.

Mr. Ansell: Well, I may have misunderstood.

Mr. Fredricks: He said he interviewed. That was one of the criteria, but he interviewed everybody. I don't know whether they applied for work.

Mr. Ansell: I will rephrase the question.

Q. Based on these interviews that you had, I understand that these two fellows in excess of 60, you did not offer employment to because of their age? [21]

A. Right.

Q. Now, other than these two people are there any others that you did not offer employment to for some specific reason, that you felt would not qualify them to work for Thomas Cadillac?

A. There was one fellow, a young fellow, I can't recall his name, that stated that if we did employ him

(Deposition of Loyd E. Coats.)

that he would not be here for at least a month. He was going on a motorcycle tour.

Q. Do you recall who that man was?

A. I can't remember him.

Q. And I explained to him that we had to open the place up and we needed help, and he said, well, "These are my terms. I am sorry. If a month won't do it, I will get a job elsewhere."

Q. Can you think of any other specific things that came up that disqualified persons in your own judgment? A. Not offhand.

Q. All right.

A. He gave me such a short time to interview him, that it is kind of hard recalling those few shorts days.

Q. Do you recall whether you personally took any steps to secure employees from other sources by telephoning other agencies?

A. Hinman, my assistant, who is the service manager, was the service manager at Lamerdin Pontiac, he brought [22] quite a few fellows with him.

Mr. Ansell: I have no further questions.

Mr. Fredricks: I have no questions at this time.

Mr. Ansell: Stipulate it may be signed before any Notary?

Mr. Fredricks: So stipulated.

Mr. DeLuce: Yes.

(A discussion was had off the record.)

Mr. Ansell: Would you stipulate that if the deposition is not signed that it can likewise be used in court with the same force and effect?

Mr. Fredricks: So stipulated.

Mr. DeLuce: So stipulated.

Witness

Subscribed and sworn to before me this ----- day of
-----, 1965.

Notary Public in and for the County
of Los Angeles, State of California. [23]

State of California, County of Los Angeles—ss.

I, Willard Haas, CSR, a Notary Public in and for
the County of Los Angeles, State of California, do
hereby certify:

That prior to being examined, the witness named in
the foregoing deposition, to wit: LOYD E. COATS,
was by me duly sworn to testify the truth, the whole
truth and nothing but the truth;

That said deposition was taken pursuant to Notice
at the time and place therein named, and was taken down
by me in shorthand and thereafter reduced to type-
writing under my direction.

I further certify that I am not interested in the event
of the action.

WITNESS my hand and seal this ----- day of Sep-
tember, 1965.

Notary Public in and for the County of
Los Angeles, State of California. [24]

Admitted in Evidence 2-24-66.

GENERAL COUNSEL'S EXHIBIT No. 18.

Superior Court of the State of California
for the County of Los Angeles.

In the Matter of the Petition of Herbert A. Cooksey, etc., et al., Petitioners, vs. Cadillac Motor Car Division of General Motors Corporation, et al., Respondents. No. 863,286.

DEPOSITION of LA RUE THOMAS,

taken at 1076 West Seventh Street, Los Angeles, California, at 10:10 o'clock a.m., on Thursday, August 19, 1965, before WILLARD HAAS, CSR, Notary Public. [1]

Appearances of Counsel:

For the Petitioner: Richman, Garrett & Ansell, by: Herbert M. Ansell, 1325 Wilshire Boulevard, Los Angeles, California.

For Thomas Cadillac, Inc.: H. Burdette Fredricks, 3600 Wilshire Boulevard, Los Angeles, California.

For the Respondent General Motors Corporation, Cadillac Motor Car Division: Lawler, Felix & Hall, by: Richard D. DeLuce, 800 Standard Oil Building, Los Angeles, California. [2]

LA RUE C. THOMAS,

having been first duly sworn, deposed and testified as follows:

Examination

By Mr. Ansell:

Q. Mr. Thomas, have you ever had your deposition taken before?

A. I had a deposition taken a few years back in another matter.

(Deposition of LaRue C. Thomas.)

Q. Has your counsel, Mr. Fredricks, advised you as to the nature of this proceeding here this morning?

A. Well, I have a general idea of what it is.

Q. You understand this proceeding this morning is part and parcel of the case entitled In the Matter of the Petition of Herbert A. Cooksey against Cadillac Motor Car Division, LaRue Thomas, Doe Corporation—excuse me. That has been changed now to Thomas Cadillac, Inc.

Mr. Fredricks: Yes, LaRue Thomas, individually.

Mr. Ansell: Q. Case No. 863,286 in the Los Angeles Superior Court. Do you understand that?

A. I do.

Q. And that the questions that I ask you here to-day and the answers you give will be reduced to a booklet form, then shown to you, and can be used for some purposes [3] at the time of the trial. Do you understand that? A. I do.

Q. So that with some exceptions this is generally court testimony that you are giving out of court. Do you understand that? A. I understand.

Q. If there is anything I ask you that is not clear or that is vague or nebulous in any way, please ask me, and I will try to restate it.

Now, is it a fact that you are the president of Cecil L. Thomas & Sons, Incorporated? A. I am.

Q. Is that corporation still in existence?

A. Yes.

Q. Is that a California corporation? A. Yes.

Q. Who are the other officers of that corporation?

A. My brother, Kenneth R. Thomas is the secretary-treasurer.

(Deposition of LaRue C. Thomas.)

Q. Is there a vice president? A. No.

Q. Are there any other officers? A. No.

Q. Who are the members of the board of directors?

Mr. Fredricks: If you know.

Mr. Ansell: If you can help him, Counsel, go right [4] ahead.

Mr. Fredricks: It is the four Thomases and I am the fifth member of the board of directors.

LaRue C. Thomas and his wife, Glenna Thomas, and Kenneth R. Thomas and his wife, Lenora Thomas, and myself.

Mr. Ansell: Q. Has stock been issued in that corporation?

Mr. Fredricks: Yes.

Mr. Ansell: Who are the shareholders?

Mr. Fredricks: LaRue C. Thomas and Kenneth R. Thomas.

Mr. Ansell: Q. Cecil L. Thomas & Sons, Inc. was at one time a member of the San Pedro-Wilmington Motor Car Dealers Association; is that correct?

A. Yes.

Q. Through that association you engaged in collective bargaining with the machinists and the painters union; is that right? A. Yes.

Q. Do you recall when that corporation first hooked up with the Association?

A. As a matter of fact, to be perfectly legal about it, the corporation never was a member. There was a partnership that we operated under for many, many years, that was a member of the San Pedro-Wilmington Motor Car Dealers Association. About July 1962 or '61— [5]

(Deposition of LaRue C. Thomas.)

Mr. Fredricks: You are trying to determine the date of incorporation of Cecil L. Thomas?

The Witness: Yes.

Mr. Fredricks: It was May or June of 1961.

The Witness: May or June of '61 that the partnership was dissolved and a corporation was formed.

Mr. Ansell: Q. Yes.

A. And, strictly speaking, that corporation never became a member of the San Pedro-Wilmington Motor Car Dealers Association.

Q. Did the partnership lodge a power of attorney with the Association or some type of document authorizing the Association to represent it, the partnership, in collective bargaining?

A. It might have sometime over the years, but God knows when. I wouldn't know.

Q. What you are saying is that—

A. I wouldn't remember. Let us put it that way.

Q. What you are saying is that after the business incorporated under Cecil L. Thomas & Sons, Inc., the corporation never filed in its name some documents authorizing the Association to represent it?

A. Never.

Q. You are aware that the last agreement with the Association and the Union was reached approximately June 15, 1962? [6]

A. That would be a reasonable assumption.

Q. Let me show you the petition in this instant case, and I am directing him to exhibit A-1 attached to the petition which reads: "Wage scale and working rules," and appears to be a contract between the San Pedro-Wilmington Motor Car Dealers Association and

(Deposition of LaRue C. Thomas.)

the Machinists and Painters Union, and I am turning to page 11 of that document, a signature page, and directing your attention to the language that reads "Cecil L. Thomas & Sons by"; do you recognize that writing?

A. That is the signature of my brother.

Q. Kenneth R. Thomas? A. Yes.

Q. All right.

A. The date of that was June what?

Q. The contract reads, in effect on and after June 15, 1962, and then Article 23 of page 10 recites full force and effect for a period of three years beginning June 15, 1962. A. Okay.

Q. Do you recall whether either you or your brother or any other representative of the Cecil L. Thomas & Sons, Incorporated participated in the negotiations that culminated in that agreement that I have just shown you?

A. As far as I know, my brother was present at some of the meetings, but I don't know this to be true, but [7] I have a feeling it was. I was in Europe at the time.

Q. I see. Is Kenneth Thomas actively involved with some automotive agency at the present time?

A. With this one.

Q. In what capacity does he work with this establishment? A. Secretary-treasurer.

Q. What is the present status of Cecil L. Thomas & Sons, Incorporated? Is it active to any extent at all?

A. The corporation is still intact, all of its assets are still intact, just in suspense. All of the assets are presently being liquidated into money, and it is cur-

(Deposition of LaRue C. Thomas.)

rently on deposit, these moneys are on deposit with the San Pedro Branch of the United California Bank. All of the funds that were in that corporation are still intact.

Q. I see. What was the address of your location in the Harbor area when the agency was operated as Cecil L. Thomas & Sons?

A. 1030 Pacific Coast Highway, Harbor City.

Q. What was the business called?

A. Cecil L. Thomas & Sons, Inc., a corporation.

Q. Was the equipment, including automobiles, tools, machinery held in the name of the corporation, the equipment located at that address? A. Yes.

Q. Did that corporation enter into an arrangement [8] with Marina Oldsmobile at sometime in the last year or so? A. Yes.

Q. What generally was the arrangement, can you tell us?

A. We sold them certain designated assets.

Q. Which assets did you sell?

A. The Oldsmobile GMC truck parts inventory, all special tools, furniture and fixtures.

Q. When you say inventory, you are not including the automobiles that were on hand themselves, are you? A. Oh, yes.

Q. I see. All right. Those transferred over by the terms of the sale? A. The new cars.

Q. I beg your pardon? A. The new cars.

Q. The new cars. Yes. All right. Now, were the new cars on hand at the time of your transaction with Marina Oldsmobile wholly owned by your corporation?

(Deposition of LaRue C. Thomas.)

Mr. Fredricks: What does this have to do with any issues in this case here?

Mr. Ansell: It may have a great deal to do with it.

Mr. Fredricks: From what standpoint?

Mr. Ansell: There is an allegation concerning the San Pedro-Wilmington contract, and this might have a bearing.

Mr. Fredricks: It is a labor contract that doesn't [9] have anything to do with new automobiles.

Mr. Ansell: This might have a bearing. Are you instructing him not to answer?

Mr. Fredricks: I will instruct him not to answer, and I will object to the question on the ground it is immaterial.

Mr. Ansell: All right.

Q. Let me ask you this. Is it a fact that whatever title your corporation had in the automobiles on hand as of the time of your sale to Marina Oldsmobile transferred over to Marina Oldsmobile?

Mr. Fredrick: Go ahead and answer that. I don't care.

The Witness: Yes.

Mr. Ansell: Q. Your full and complete title to your parts, fixtures and furniture also passed over to Marina Oldsmobile? A. Yes.

Mr. Fredricks: Of those parts and fixtures that were sold, yes.

Mr. Ansell: Q. I assume then there were some parts and fixtures that were not sold? A. Yes.

Q. What were they? What class did they fall into?

A. Cadillac inventory, Cadillac parts inventory.

(Deposition of LaRue C. Thomas.)

Q. The Cadillac parts inventory did not pass by the terms of the sale? [10] A. No.

Q. That was retained by your corporation. But parts inventory relating to other automobiles did pass; is that it?

A. Relating to Oldsmobile and GMC trucks.

Q. I see. The premises located at 1030 Pacific Coast Highway, who owns that building?

A. Thomas Investments.

Q. Is that a corporation? A. No.

Q. Is it a partnership doing business as Thomas Investments?

Mr. Fredricks: Yes.

The Witness: Yes.

Mr. Ansell: Q. Who are the partners?

A. LaRue C. and Kenneth R. Thomas.

Q. Does Thomas Investments still own the building at the present time? A. Yes.

Q. Has Thomas Investments entered into some type of lease arrangement with Marina Oldsmobile regarding that building? A. Yes.

Q. By the terms of your sale to Marina Oldsmobile was there involved a transfer of your franchise agreement with Oldsmobile and GMC and Cadillac? [11]

A. Just for the sake of clarity here, I would be inclined to say there was no transfer, because this never happens. There was a termination of our selling contract.

Q. You mean your franchise agreement?

A. Our franchise agreement with the various divisions that we represented.

Q. Of GMC? A. Of General Motors.

(Deposition of LaRue C. Thomas.)

Q. I see.

A. And it is my understanding that a subsequent franchise was issued to them by those divisions that they represent.

(A discussion was had off the record.)

Mr. Ansell: Q. What documents were entered into between—I will refer to it as “Thomas Corporation” for short. When I say “Thomas Corporation,” I mean Cecil L. Thomas & Sons, Inc.

What documents were executed between the Thomas Corporation and Marina Oldsmobile in the transaction we have been talking about?

Mr. Fredricks: Do you want me to answer it?

The Witness: Yes.

Mr. Ansell: Sure.

Mr. Fredricks: A buy-and-sell agreement.

Mr. Ansell: Q. Where is that buy-and-sell agreement at the present time? [12]

A. Well, I presume that it is here somewhere.

Mr. Fredricks: I think Kenny has a copy of it. I have a copy of it in my office, and I know Marina Oldsmobile has a copy of it, and I am sure their attorney has a copy of it.

The Witness: Just a bill of sale, isn't it?

Mr. Fredricks: It is a buy-and-sell agreement, and there is a bill of sale as to some of the assets, too.

Mr. Ansell: I recognize the fact that I haven't called for these documents by the terms of the subpoena.

Mr. Fredricks: If we have them here, I will let you see them.

Mr. Ansell: You would let me see them voluntarily?

(Deposition of LaRue C. Thomas.)

Mr. Fredricks: If not, I will call my office and get it, Herb. His names escapes me at the moment. [15]

Mr. Ansell: Q. Do you recall whether in any part of that agreement there is a transfer of the name of Cecil L. Thomas & Sons, Inc., the right to use the Thomas name? A. No.

Q. Do you recall at this time the actual date on which the contract was executed between Curtis or Marina and the Thomas Corporation?

Mr. Fredricks: June 1st, 1965 would hit it awfully close, Herb.

Mr. Ansell: All right.

Mr. Fredricks: It is either that or a day or two plus or minus. That was the target date, let me put it that way.

Mr. Ansell: Q. Prior to or following that date did Cecil L. Thomas & Sons, Inc. advise the San Pedro-Wilmington Motor Car Dealers Association of the sale, that they would not being doing business any longer in Harbor City?

A. We sent them a letter of resignation, effective May 15, I believe.

Mr. Fredricks: That is my recollection of the date.

Mr. Ansell: Q. Do you have a copy of that letter here?

A. We may have, but it wouldn't be available today for the reason that the girl who is winding up our affairs is currently on vacation, but it will be available.

Mr. Ansell: Is there an objection to my seeing that [16] at some later time?

Mr. Fredricks: I have no objection to your seeing that. I will get a copy of it for you.

(Deposition of LaRue C. Thomas.)

Mr. Ansell: All right. Fine. You will just furnish that to me, then?

Mr. Fredricks: Yes.

Mr. Ansell: Q. You recall specifically the date of that letter? The letter was dated May 15, 1965, was it?

A. No. It was effective May 15. It would be dated prior to that.

Q. Do you recall who signed the letter?

A. I did.

Q. Who was the letter sent to?

A. San Pedro-Wilmington Motor Car Dealers Association.

Q. Was it at the address of the president?

A. Frank Reiman.

Q. Under the terms of the lease between Thomas Investments and Marina Corporation are the lease payments geared at all to profits? A. No.

Q. It is a flat amount? A. Right.

Mr. Fredricks: Incidentally, the name of the attorney for Marina Olds is Frank Aldrich, and he is on, I think, North Atlantic in the City of Long Beach.
[17]

Mr. Ansell: What was the date of the incorporation of Thomas Cadillac, Incorporated? When were the articles filed?

Mr. Fredricks: I believe it is April 30, but let me check. April 30, 1965.

Mr. Ansell: Q. Who are the officers of Thomas Cadillac, Inc.?

A. LaRue Thomas, president; Kenneth R. Thomas, secretary.

(Deposition of LaRue C. Thomas.)

Q. Who are the members of the board of directors?

Mr. Fredricks: Do you want me to answer that?

Mr. Ansell: Surely.

Mr. Fredricks: LaRue C. Thomas, Kenneth R. Thomas and myself.

Mr. Ansell: Has stock been issued?

Mr. Fredricks: Not as yet.

Mr. Ansell: Has an application for permit been filed?

Mr. Fredricks: No.

Mr. Ansell: Do you contemplate doing so?

Mr. Fredricks: Oh, of course.

Mr. Ansell: Q. The franchise agreement that was entered into between yourself, Mr. Thomas, and General Motors, was that entered into in your own name or in the name of Thomas Cadillac, Incorporated?

A. The franchise?

Q. Yes. [18]

A. That is under the name of the corporation.

Q. Do you recall the first contact that you had with any representative of General Motors relative to securing a franchise agreement to operate the Seventh and Bixel premises? Was it by letter or oral?

A. Oral, and I can't tell you the date, but it was either in late January or early February, as I remember it.

Q. Incidentally, am I correct in assuming that you principally handled all the negotiations with General Motors? A. That is correct.

Q. Do you recall who it was you dealt with, your first meeting in January or February?

(Deposition of LaRue C. Thomas.)

A. There was no meeting. It was purely a telephone call wherein I was asked to arrange to have my calendar free for a date in March.

Q. Who was it that made this request?

A. Mr. W. H. Niven, Cadillac manager.

Q. N-i-v-e-n? A. Right.

Q. Does he have his office here in town?

A. In North Hollywood.

Q. Did he advise you as to the purpose of keeping your calendar clear, as to what the meeting would be?

A. No. He said there would be something of great [19] importance to be discussed.

Q. He gave you no further information at that time? A. That's right.

Q. What was the next thing that happened along the chain of events that led to the franchise agreement?

A. He called me, and I don't have the date. I have looked in my diary and I can't find the date. This was a very hush-hush sort of thing, and he asked me to be at the Beverly Hills Hotel lobby at 9:00 a.m.

As I recall, it was around March 13 or 12 or some such date.

Q. At the Beverly Hills Hotel? A. Yes.

Q. Did you go to that hotel?

A. Yes. My brother and I both were there.

Q. Did you meet with somebody from General Motors? A. Yes.

Q. Who was that?

A. We met with Mr. Hopkins, regional sales manager of Cadillac; Mr. W. H. Niven, zone manager; Mr. Ed Ruth, regional sales manager of Oldsmobile.

(Deposition of LaRue C. Thomas.)

Q. R-u-t-h?

A. Yes. Mr. John Kolenic, Los Angeles zone manager.

Q. How do you spell his name?

A. K-o-l-e-n-i-c.

Q. All right. [20] A. My brother and I.

Q. There were no other automotive dealers from the Los Angeles County area present?

A. No one else was present.

Q. Will you tell me what transpired, to the best of your recollection?

A. Mr. Hopkins went into considerable detail explaining the results of several surveys that were made, which was part of their national program, that they intended to close the Harbor City point as far as Cadillac was concerned, and they very much desire having us become the Seventh and Bixel representative for Cadillac.

Q. Did you say something in response to this?

A. I told him we would think about it, think it over and let him know later.

Q. In other words, you were advised that Cadillac did not want its automobiles sold in Harbor City any longer? A. That isn't what I said at all.

Q. This is what I am trying to understand. My notes reflect you said that he would close Harbor City point. Can you explain what you mean by that?

A. Well, this is an expression used in the automobile world; when they terminate a franchise they close the point. If it is to a permanent thing, it is the point is closed. There would no longer be any distribution of [21] automobiles at that address.

(Deposition of LaRue C. Thomas.)

Q. I see.

A. It doesn't mean necessarily it wouldn't be made a mile away, but at that point it is closed.

Q. Was there anything else that transpired at that meeting? A. No.

Q. What is the next thing that happened?

Mr. Fredricks: With regard to procuring of a franchise here?

Mr. Ansell: That is correct.

The Witness: My brother and I discussed this, and several days later we called the zone manager, Mr. Niven, and informed him of our positive decision, or affirmative decision, I should say.

Mr. Ansell: Q. What did he say in response to this?

A. He said that there was a great deal of paper-work to be completed, and that I was free to take my vacation and they would get in touch with us when the next step was in order.

Q. I take it this telephone conversation with Mr. Niven was a few days after your meeting at the Beverly Hills Hotel; is that right? A. That's correct.

Q. What is the next thing that happened along the line of securing a franchise? [22]

A. I called my brother from Lisbon, Portugal, and he informed me that it would be necessary for me to be home on the 26th or 28th, I don't recall which, of April.

Q. Was there any reason for that?

A. He said there was to be a start of the paper-work on that date.

(Deposition of LaRue C. Thomas.)

Q. Then were you back in Los Angeles on or about the 28th of April?

A. I returned and attended the meeting at the North Hollywood office of Cadillac Motor Car Division and was given a copy of the lease to study. This would be off the record now.

(A discussion was had off the record.)

Mr. Ansell: Q. I understand from our off-the-record discussion, Mr. Thomas, that at this meeting held—I imagine at the offices of Mr. Niven, is that correct, in North Hollywood? A. Yes.

Q. On or about the 28th of April? A. Yes.

Q. You recall a lease being given to your attorney, Mr. Fredricks?

A. It was given to me for study.

Q. It was given to yourself for study and there may have been some other documents, but you can't recall right now? [23]

A. No, I can't. Actually, most of the work there was of an oral nature, arriving at some general ideas as to what we were buying and how the method of pricing would be arrived at, and what the working capital requirements would be, and information of this nature.

Q. I notice in item number one of the subpoena I have asked for any and all correspondence between Mr. LaRue Thomas and representatives.

A. There was none. It was all oral.

Q. In other words, you are saying there was nothing in writing prior to June 7, 1965?

A. There was never anything in writing. This was hush-hush.

(Deposition of LaRue C. Thomas.)

Mr. Fredricks: Let us go off the record.

(A discussion was had off the record.)

Mr. Fredricks: With respect to your subpoena and your notice of deposition, item number one where you ask for any and all correspondence between LaRue Thomas and General Motors prior to June 7, 1965, there is no correspondence as such. By that I mean no letters that transpired. Everything was oral. There were, however, some other documents, bill of sale and so forth that you called for later that were executed prior to that date of June 7.

Mr. Ansell: Do you have with you a copy of the lease that was given to Mr. Thomas on or about April 28 for his [24] study, and any other documents that were given to him at that time?

Mr. Fredricks: Have you called for that, and if so, where?

Mr. Ansell: Well, item number three, all documents relating to Cadillac dealer's franchise.

Mr. Fredricks: The lease has nothing to do with the franchise. We have the franchise, Herb.

Mr. Ansell: I understand that.

(A discussion was had off the record.)

Mr. Ansell: I understand from my off-the-record discussion with counsel, Mr. Fredricks, that a lease agreement was entered into between Mr. Thomas—excuse me—Thomas Cadillac, Inc., I assume; is that correct?

Mr. Fredricks: That is correct.

Mr. Ansell: —and General Motors, relating to the premises at 1076 West Seventh Street and the lot across the street. Is that correct?

(Deposition of LaRue C. Thomas.)

Mr. DeLuce: No.

Mr. Ansell: That is something else?

Mr. Fredricks: Yes. That is a sublease.

Mr. Ansell: A sublease?

The Witness: Part of the property over there is owned by General Motors, and part of it is owned by individuals, but the lease is with General Motors on that property. [25]

Mr. Ansell: Let us deal with that in just a second. Confining ourselves to the premises at 1076 West Seventh, the lease agreement was entered into between these parties. What date was that, Counsel? Can you tell me that?

Mr. Fredricks: I don't know if my copy has it. It would be June, 1965.

Mr. Ansell: Mr. Thomas says in his deposition that negotiations included June 7. Would that help fix it, or perhaps there is a date on the lease. There probably is.

Mr. Fredricks: I am not sure, because we had a partial closing date and then a closing date, and a copy of the lease I have is not dated. I believe it became effective, though, June 1st, 1965, didn't it?

The Witness: Yes.

Mr. Fredricks: It is dated June 7, but it is effective June 1st.

Mr. Ansell: Q. That is the lease of the 1076 West Seventh Street premises; is that right?

A. Well, for the entire deal.

Q. When you say the entire deal, do you mean the premises across the street, too?

A. Yes, they own that.

(Deposition of LaRue C. Thomas.)

Q. What I had reference to was this: Is this property across the street, and the premises at 1076 all covered by one lease? [26] A. Yes.

Q. Can you tell me what the term of the lease is?

A. I don't think it is any of your business.

Mr. Fredricks: I think it is immaterial and I will instruct the witness not to answer.

Mr. Ansell: Was the lease in fact with Thomas Cadillac? Did we establish that, or was it with LaRue Thomas or Cecil L. Thomas & Sons?

Mr. Fredricks: Well, let me take a look. I can't tell you. This copy doesn't show.

Mr. Ansell: Is that an unsigned copy?

Mr. Fredricks: Yes. In any event, the lease would be with Thomas Cadillac at this time, either directly or by assignment.

The Witness: This is right.

Mr. Ansell: Do I understand and is this a fair statement, that all documents signed with General Motors Corporation were in the name of Thomas Cadillac, Inc., it was never in the name of just LaRue Thomas or any other names?

Mr. Fredricks: No, you don't understand correctly at all.

The Witness: No. There were many documents, or several documents in my name alone, preliminary documents.

Mr. Ansell: Q. And subsequently they were all assigned to Thomas Cadillac? [27]

A. This is correct.

Q. All right.

(Deposition of LaRue C. Thomas.)

Mr. Fredricks: Herb, I can tell you that everything is in the name of Thomas Cadillac now.

Mr. Ansell: At the present time?

Mr. Fredricks: Yes, either directly at closing or by assignment. That should answer that question.

Mr. Ansell: At this time I would ask that you produce for me a copy of the lease that we have been talking about, and I would propose at this time that any portion of that lease relating to amounts of moneys involved be not made available to me, be blocked out, or in some other agreeable fashion it be withheld from me. I ask for the production of the lease itself.

Mr. Fredricks: For the record, I would state that the lease is a normal commercial lease between Cadillac Motor Division of General Motors Corporation and Thomas Cadillac, and that it was an arms'-length transaction, that there are no terms in the lease that would be material to the issues in this case, and I refuse to submit a copy of the lease at this time.

I also would like to note in the record that neither your subpoena nor your notice of the deposition called for the production of a lease.

Mr. Ansell: Is there a signed copy of the lease available with somebody in the Thomas Cadillac, Incorporated [28] at the present time?

Mr. Fredricks: I would presume so. I don't know a business man that has a lease that doesn't have a signed copy in his possession.

Mr. Ansell: Then you don't presume. You know for a fact, then; is that right?

Mr. Fredricks: I don't know for a fact. This would certainly be a normal thing.

(Deposition of LaRue C. Thomas.)

Mr. Ansell: Do you want to confer with Mr. Thomas?

Mr. Fredricks: I presume we have a signed copy of the lease, don't we?

The Witness: I would say we have one somewhere.

Mr. Ansell: Q. Would that be on the premises here? A. I presume so.

Q. Who in your organization normally is in charge of all records of the corporation?

Mr. Fredricks: Of that nature. Who would have it?

The Witness: Mr. Toombs.

Mr. Ansell: Q. What is his first name?

A. Ray.

Q. Ray? A. Joseph Raymond Toombs.

Q. What is his official title with this organization?

A. Business manager.

Q. Does he have an office in this building here? [29] A. Yes.

Q. In addition to the lease were there any other documents outside of the franchise agreement itself executed between representatives of General Motors and yourself or other representatives of the Thomas Cadillac, Incorporated? A. Yes.

Q. What documents would they be?

Mr. Fredricks: Well now, relating to what, Herb? Are you looking at number three of your subpoena? Your subpoena is the same as the notice.

Mr. Ansell: That is correct.

Mr. Fredricks: Relating to the franchise?

Mr. Ansell: That is correct.

Mr. Fredricks: And the transfer of title of equipment. Do you want me to produce that now?

(Deposition of LaRue C. Thomas.)

Mr. Ansell: Please.

Mr. Fredricks: I am going to produce for you pursuant to your notice and your subpoena, a copy of the Cadillac franchise and also a copy of the equipment and fixtures that were sold.

(A discussion was had off the record.)

Mr. Fredricks: Let the record show that I am handing to Mr. Ansell pursuant to his subpoena and pursuant to his notice a copy of the franchise agreement with Cadillac Motor Car Division, and that I also am handing him a list [30] identified as "Schedule A to Bill of Sale," which shows the equipment and fixtures purchased from Cadillac Motor Car Division of General Motors by LaRue C. Thomas or Thomas Cadillac, Inc., consisting of many pages, the last of which I am going to remove and show it to you, Herb.

It indicates a bookkeeping machine, wastebasket, 17 items, with the grand total of gross evaluation as put on by Cadillac. Underneath, however, is the purchase price we paid, so I am going to—

Mr. Ansell: You mean the total overall that you paid for equipment, or just the total overall price?

Mr. Fredricks: This is the gross value as determined—

Mr. Ansell: What I mean—

Mr. Fredricks: —for the equipment. It has nothing to do—just this list here. Just this list.

Mr. Ansell: In other words, the figure that you are secreting from me relates—

Mr. Fredricks: Is the price we paid for the equipment.

Mr. Ansell: For the equipment?

(Deposition of LaRue C. Thomas.)

Mr. Fredricks: Right. For all of this equipment right here.

(A discussion was had off the record.)

Mr. Fredricks: This is the last page of all this, but at the bottom they typed on the agreed purchase price.

Mr. Ansell: I understand that. Is this your one [31] copy that you have?

Mr. Fredricks: Yes. Just an inventory is all it is.

Mr. Ansell: I know that. I will tell you very frankly my feelings on this. I want a copy of this information. I have no interest in the figure that is folded underneath that is not being revealed to me, you are doing that quite properly, and I am not interested in it, and I wouldn't attempt to get it. I do want a copy of the rest of this material, though.

Do you want to discuss this on the record or do you want to go off?

Mr. Fredricks: We might as well go off the record.

(A discussion was had off the record.)

Mr. Ansell: Counsel, the franchise agreement that you have handed to me here, is it your feeling on this, also, that you don't want this to go out of the premises?

If so, would you duplicate this for me? Let me say this, if you have no objection to having it go out, I would entrust this—

The Witness: I don't think it is valid any more, anyhow. Isn't this the old one? This is no longer valid, anyway.

Mr. Fredricks: Do you have a new one?

(Deposition of LaRue C. Thomas.)

The Witness: Yes. We were recontracted the other day, all dealers.

Mr. Fredricks: I didn't know that. [32]

Mr. Ansell: I would say ordinarily that I would entrust this to the court reporter and have him make copies and attach on the deposition.

Mr. Fredricks: In view of the fact it is our only copy, we will duplicate it for you, Herb. But let us have a little understanding that we are not going to supply you with every little thing that you want at our expense.

Mr. Ansell: As I say, ordinarily I would bear the expense with the court reporter.

Mr. Fredricks: All right.

Mr. Ansell: Aside from the franchise and the list of fixtures and equipment purchased, were there any other documents executed between General Motors and your client relating to the sale of the agency?

Mr. Fredricks: Sure. There is a lease, there is a bill of sale.

Mr. Ansell: Would you identify them one by one, please, so we can take them down?

Mr. Fredricks: I have a bill of sale that was executed for the equipment and so forth.

Mr. Ansell: All right.

Mr. Fredricks: A copy of which I am not going to make for you. Transmittal letter—

Mr. Ansell: Can we stick with one at a time here. The bill of sale, this relates to the purchase of the equipment, is that correct? [33]

Mr. Fredricks: Yes. Fixed assets, the company used cars and everything we bought, designated assets that

(Deposition of LaRue C. Thomas.)

we bought from General Motors Corporation, Cadillac Motor Car Division.

Mr. Ansell: Would you tell me what assets are included on the bill of sale that were purchased by your client from General Motors?

Mr. DeLuce: You mean by categories?

Mr. Ansell: Yes.

Mr. Fredricks: Well, the fixed assets of which I am making a copy for you now. There were some company cars and used cars.

Mr. Ansell: What about the new car inventory on hand?

Mr. Fredricks: Well, there were some new cars.

Mr. Ansell: Are they covered by the terms of this bill of sale?

Mr. Fredricks: I don't think I am qualified to answer that question.

Mr. Ansell: Perhaps Mr. Thomas could help us with that.

The Witness: I don't know. I doubt it, but I don't think that they would be included in this, because an automobile is an instrument of its own. It has its own title, and I don't think there was any bill of sale, but I don't know. When you buy a car, a new car from a factory, [34] you don't get a bill of sale. You get an invoice for it. It doesn't become an entity until it is registered with the DMV, and then you would have a bill of sale.

Mr. Fredricks: Well, we do, however, LaRue, have an inventory of new vehicles that you purchased from General Motors Corporation effective as of June 1, '65,

(Deposition of LaRue C. Thomas.)

and I presume this would be your commencing inventory.

The Witness: Yes.

Mr. Ansell: Is that part of the bill of sale?

Mr. Fredricks: Yes.

The Witness: It is part of the bill of sale.

Mr. Ansell: All right. May I see the bill of sale?

Mr. Fredricks: No, because it contains figures that are not material to your case nor have they been properly subpoenaed.

Mr. Ansell: May I see the bill of sale, then, with you blocking out in some fashion the figures contained thereon?

Mr. Fredricks: It is almost a physical impossibility, unless we go through each page, Herb.

Mr. Ansell: All right. May we look at the bill of sale together, perhaps blocking out by a piece of paper the figures so that I can at least see the general categories that are talked about?

Mr. Fredricks: Well, I will give you the general categories. Schedule A is the fixed assets of which we [35] are making you a copy. Schedule B, I think I can do it—B is the company cars.

Mr. Ansell: "A" is what, now?

Mr. Fredricks: Fixed assets. Here, I can give it to you. Here is a summary of it, of the bill of sale, with all the schedules.

Mr. Ansell: What comes under fixed assets, would you tell me?

Mr. Fredricks: The document I just showed you that we are having Xeroxed now.

Mr. Ansell: All of the items on that document are called fixed assets?

(Deposition of LaRue C. Thomas.)

Mr. Fredricks: Furniture, fixtures, tooling and so forth, designated fixed assets.

Mr. Ansell: Mr. Reporter, will you designate that document when it comes back to you as Petitioner's Exhibit A and attach it to the deposition.

(Whereupon, the above-mentioned document was marked by the Notary Public as Petitioner's Exhibit A and a copy is attached hereto.)

Mr. Ansell: Now, B would be company cars and used cars. Can you tell us by examining it yourself, if you don't wish me to see it, the number of company cars and used cars that were transferred over by the terms of the sale?

Mr. Fredricks: I doubt it, but I will try. [36]

The Witness: It seems to me like there was—didn't we buy six used cars?

Mr. Fredricks: Six company cars and six used cars. Six of each.

Mr. Ansell: What is C now?

Mr. Fredricks: That is the new car beginning inventory that we just discussed.

Mr. Ansell: This is all part of this buy-and-sell agreement; is that correct? These schedules, A, B and C that we have mentioned so far are part of what we call the buy-and-sell agreement?

Mr. Fredricks: The schedules attached to the buy-and-sell agreement, yes.

Mr. Ansell: What was the number of new cars included in this inventory?

Mr. Fredricks: I can't tell you. I can't tell you without counting them.

(Deposition of LaRue C. Thomas.)

The Witness: Will a general number be satisfactory, like a figure of 150 or 152?

Mr. Ansell: It would be very helpful, yes.

The Witness: That would be about it.

Mr. Ansell: Is that your best estimate?

The Witness: Yes.

Mr. Ansell: These are all new Cadillacs?

The Witness: Yes.

Mr. Fredricks: Wait a minute, Approximately 150, [37] although I don't think this information is material at all to your case, Herb.

Mr. Ansell: All right. Your objection is noted. I understand your position.

What is schedule D?

Mr. Fredricks: Parts.

Mr. Ansell: How does it read over there? Can I see?

(A discussion was had off the record.)

Mr. Ansell: How does schedule D read there?

Mr. Fredricks: Cadillac repair parts.

Mr. Ansell: Out of curiosity, how many pages of the agreement take care of the repair parts?

How much space does it take to enumerate that?

Mr. Fredricks: Isn't that—

The Witness: Do you mean an inventory of physical inventory of the parts?

Mr. Ansell: I assume there is some kind of breakdown of these repair parts, some kind of detailing of them on the buy-and-sell agreement under schedule D. Is it all encompassed in one page or is it several pages?

Mr. Fredricks: There is, and they are not included in this document. They are included in other documents

(Deposition of LaRue C. Thomas.)

that I have seen that are approximately 12-by-16 in measurement, and they weigh approximately 20 pounds.

(A discussion was had off the record.)

Mr. Ansell: Q. I understand that there is a detailing [38] of these repair parts that were included under schedule D of the buy-and-sell agreement. These are maintained on IBM sheets, and they are apparently quite bulky. They are maintained here on the premises, in general; is that correct?

Mr. Fredricks: That is correct.

Mr. Ansell: Q. What is schedule E?

A. Accessories, Cadillac accessories.

Q. Would it be fair to say that those accessories also are maintained on IBM sheets maintained on the premises, and that they are fairly bulky?

A. I presume so. Hell, I don't know.

Q. What is next?

Mr. Fredricks: Herb, you are going to love this one. Schedule F is Cadillac repair parts and accessories not included in schedule D and E.

(A discussion was had off the record.)

Mr. Ansell: Q. Do you understand yourself why we have this classification, why the distinction between these parts? Is there any particular reason for it?

A. Well, I have an idea that it has to do with items that are not made by General Motors, like U. S. Royal Tire and floor mat that is made by Jolip, or whatever. That would be my opinion as to why it is not shown as a genuine Cadillac part.

Q. All right. Schedule G, what is that? [39]

Mr. Fredricks: Special tools.

(Deposition of LaRue C. Thomas.)

Mr. Ansell: Q. Will you, Mr. Thomas, tell us what kind of tools would fall into this category, as best you can?

A. It would be any type of a tool or a fixture or a jig that was used exclusively or primarily for the repair of Cadillac automobiles.

Q. Is there a breakdown of these special tools in the buy-and-sell agreement that you have here?

A. I don't know. I think the special tools and all, that is all part of the asset thing that you have, that you are getting Xeroxed.

Q. That, I thought, was fixed assets.

Mr. Fredericks: No. There is a separate identification. I would be happy to show you schedule G.

Mr. Ansell: I can understand your generosity now. Do you want me not to look at the second page?

Mr. Fredricks: I don't think there is anything on the second page.

Mr. Ansell: Thank you. What is schedule H?

Mr. Fredricks: Gasoline, oil and grease, new tires and tubes.

Mr. Ansell: Do you have some kind of breakdown on that category?

Mr. Fredricks: No, it is just—

Mr. Ansell: Where would that be contained? On IBM [40] sheets, also?

Mr. Fredricks: I beg your pardon. No, I don't. Well, all I have is just an inventory.

Mr. Ansell: May I see that?

Mr. Fredricks: You can see part of it. All I am blocking out are prices here.

Mr. Ansell: All right.

(Deposition of LaRue C. Thomas.)

Mr. Fredricks: And on page 2 is tires.

This is also schedule H.

Mr. Ansell: Is there a schedule I?

Mr. Fredricks: Yes. Paint.

Mr. Ansell: Paint?

Mr. Fredricks: Yes.

Mr. Ansell: Is that broken down in any way?

Mr. Fredricks: Do you want to have a little peek at that?

Mr. Ansell: Yes. Is there a J?

Mr. Fredricks: Undercoating. I am going to show you that one, Herb.

Mr. Ansell: What is "K"?

Mr. Fredricks: "K" is the final and miscellaneous items.

Do you want to see the breakdown of K?

Mr. Ansell: All right.

Q. Are there any other sections of the buy-and-sell agreement that you haven't shown me? [41]

Mr. Fredricks: No, sir.

Mr. Ansell: I would like to have a copy of the buy-and-sell agreement. What is your position on that? That is, of course, without the figures.

Mr. Fredricks: I have shown you the entire buy-and-sell agreement but for the prices.

Q. Mr. Ansell: Correct.

Mr. Fredricks: Which I believe we have both agreed are not material in any sense whatsoever to any issue in this case.

Mr. Ansell: That is correct. I am not interested in price. I want the designation and the schedule such as you have shown me.

(Deposition of LaRue C. Thomas.)

Mr. Fredricks: If you want to pay for the cost of reproduction, I will furnish you with a copy of the buy-and-sell without the cost figures.

Mr. Ansell: That is agreed. I assume they will be done on the Xerox machine here.

(A discussion was had off the record.)

Mr. Ansell: Can we leave it, then, that you will reproduce the entire buy-and-sell agreement without the figures, including schedules A through K, and will get them to my office at your earliest convenience, charging me with the standard Xerox rate?

(A discussion was had off the record.)

Mr. Fredricks: I will have no objection to giving you [42] a copy of the buy-and-sell agreement without the cost figures in it.

Mr. Ansell: That is the buy-and-sell, including the bill of sale and the list of fixtures you are producing right now.

Mr. Fredricks: The bill of sale with the exhibits, excluding the Exhibit A, which is being reproduced right now.

Mr. Ansell: That is correct. You will send that to my office with a bill for the reproduction?

Mr. Fredricks: I will send it upstairs to our Xerox department and I will have them bill you.

Mr. Ansell: That is fine.

You have told me about the franchise agreements and the buy-and-sell agreements that were executed. Are there any other documents that were executed in connection with the sale from GMC?

Mr. Fredricks: Referring to paragraph 3 of your subpoena and your notice?

(Deposition of LaRue C. Thomas.)

Mr. Ansell: That is right.

Mr. Fredricks: I know of no others.

Mr. Ansell: In other words, in the words of the subpoena, relating to the transfer of title to the premises, equipment, fixtures?

Mr. Fredricks: Well, number one, title to the premises was not transferred to us. The equipment, fixtures [43] and so forth are all subject to the bill of sale which we have been talking about, and which I have just shown you, so I think we have shown you everything we have.

Mr. Ansell: All right. Now, again, so we are clear, you are taking the position that you will not voluntarily furnish a copy of the lease agreement; is that correct?

Mr. Fredricks: We have already been through that, yes.

Mr. Ansell: Would you again just state your reason for that so that we have it concisely, so it may be ruled upon.

Mr. Fredricks: You are just cluttering up the record. I have already stated exactly my reasons why I wouldn't let you have a copy of the lease. There is absolutely no materiality to your lawsuit.

Mr. Ansell: Do you concede the fact that my subpoena properly calls for the lease?

Mr. Fredericks: I certainly do not. It does not call for the lease.

Mr. Ansell: You do not feel that item three embraces the lease agreement?

Mr. Fredericks: No. There is no transfer of title to the premises.

(Deposition of LaRue C. Thomas.)

Mr. Ansell: Well, this is the thing that we are entitled to see. In other words, forgetting your claim of immaterialty, we have asked for documents relating to [44] the transfer of title now.

The Witness: There was—

Mr. Ansell: Just a moment, Mr. Thomas.

Apparently there is no transfer of title as such, but there is a lease agreement, so we are entitled to see what the transfer is.

Mr. DeLuce: In the Answer that was filed on behalf of General Motors Corporation by our office in this lawsuit, we set forth the fact that there was a lease arrangement between General Motors Corporation and Thomas Cadillac for these premises, so this was known to you or should have been known to you if you read your pleadings. All you had to do, if you wanted that, or to put yourself in a better position to get it, at least, was to have included it in your subpoena on Mr. Thomas and on your notice of taking deposition, which you haven't done.

You just have a conglomerate or generalized category there that doesn't refer to any lease at all, and there is no secrecy about this. This is all set forth in the pleadings. I think it is set forth in the pleadings filed by Thomas Cadillac, for that matter.

Mr. Fredricks: I will stipulate for the record there is, in fact, a lease.

Mr. Ansell: Perhaps literally speaking there is no transfer of title, but there is certainly a transfer of a leasehold interest. Now, if you want to stand on that, [45] all right, but I can just easily issue another subpoena on the custodian of the records and get a look at it.

(Deposition of LaRue C. Thomas.)

Mr. DeLuce: But that won't get you over the hurdle of the materiality or lack of materiality.

Mr. Ansell: This is something we can litigate then. You are taking the position then that the lease agreement, the terms of the lease agreement are irrelevant and immaterial to any issue in this case? Is that your basic legal position?

Mr. Fredricks: I have stated my position. It is on the record.

Mr. Ansell: Am I stating it correctly?

Mr. Fredricks: I have already stated it, Herb. It is in the record.

Mr. Ansell: I might just ask one other thing in the interest of maybe saving the time of issuing another subpoena and perhaps taking a little more time of everybody.

To narrow the issue down would you be willing to waive what you consider to be a defect in language; in other words, in item three where I call for documents relating to the transfer of title, would you be willing to stipulate that that properly would embrace the lease contract, but that you are refusing to show it because you deem it to be irrelevant and immaterial?

You see, in that manner we can get a clean ruling at this time from Judge McCoy as to whether it is [46] relevant and material, otherwise, if you do stand on this I will tell you very frankly I will issue another subpoena duces tecum properly, and then you will simply raise your immateriality objection again and we will have to have it ruled on in that way, you see.

Mr. Fredricks: I think that would be the clear way of doing it, if you want to issue another subpoena. We will get a ruling from Department 63.

(Deposition of LaRue C. Thomas.)

Mr. Ansell: Certainly we will.

(A discussion was had off the record.)

Mr. Ansell: Again, then, you have shown us all the documents that were signed in connection with the transaction between GMC and Mr. Thomas or Thomas Cadillac?

Mr. Fredericks: Herb, you asked me that question just a few minutes ago and, to the best of my knowledge, the answer is "Yes."

Mr. Ansell: Q. Was there any other correspondence on or about June 7 or since June 7 relating to this transaction that we have just been discussing?

A. (The witness shakes his head from side to side.)

Q. No letter or correspondence from General Motors? A. No.

Q. Now, going back to your meeting of April 28 when the lease agreement was first shown to you for your perusal, what next transpired after that, after that [47] meeting, along the lines of consummating a deal with GMC?

A. This would be off the record, because I want to get something clear in my mind.

(A discussion was had off the record.)

The Witness: We had a partial closing of the sale or purchase, rather, of certain designated assets on June the 1st, and a complete closing around the 7th.

Mr. Ansell: Q. Now, when you say a complete closing, do you mean a closing out of all inventory balances?

A. Yes. There were some items which inventories were required and pricing, and they just took time, so around the 7th, or perhaps it was on the 7th, these

(Deposition of LaRue C. Thomas.)

totals were computed and we issued our final check for the purchase of these certain items.

Q. Now, just one other question. The buy-and-sell agreement that you have shown me, what is the date on that again, Burt?

Mr. Fredricks: The 7th of June.

Mr. Ansell: Thank you.

Mr. Fredricks: Wait a minute. Excuse me. It is the 1st of June. The 7th of June is the date that Mr. Hopkins' signature was notarized by a notary in Los Angeles.

Mr. Ansell: Q. What was the first date that you opened up—

Mr. Fredricks: There apparently was a preliminary agreement dated May 11, because this bill of sale refers [48] to an agreement date May 11 between General Motors Corporation as seller and LaRue C. Thomas as buyer.

The Witness: This was this thing where I was in on an interim basis rather than the corporation that I described earlier.

Mr. Ansell: Is there a separate document covering that interim period?

Mr. Fredricks: It refers to one, but I don't have it. Let me look.

Mr. Ansell: What document refers to that?

Mr. Fredricks: The bill of sale.

Mr. Ansell: All right.

Mr. Fredericks: I don't have it. Do you know what it would be, LaRue, on May 11?

The Witness: Well, it is not clear in my mind at the moment.

(Deposition of LaRue C. Thomas.)

Mr. DeLuce: I can describe it from our pleadings, which I think has a general description of it, as I understand it.

Mr. Fredricks: Excuse me. I have it. There was a preliminary agreement dated May 11 with respect to when the closing date would be and the preparation of exhibits and so forth.

Mr. Ansell: Was that signed by Mr. Thomas as an individual?

Mr. Fredricks: Correct. That was the one that was [49] assigned then to the corporation, that lead to the buy-and-sell agreement. I mean the bill of sale.

Mr. Ansell: Let me ask you this, now. This preliminary agreement on May the 11th, does that embrace these items that we have just been discussing, namely, the franchise agreement and the buy-and-sell agreement?

Mr. DeLuce: It doesn't embrace the franchise agreement itself, Herb.

Mr. Ansell: I see.

Mr. DeLuce: What it is is an agreement to purchase certain of the assets and to lease the premises contingent upon the issuance of a franchise to sell Cadillac automobiles, and it is set forth some dates upon which this would hopefully be done.

Mr. Ansell: All right.

Mr. Fredricks: In specific answer to your question, it says that an inventory will be taken and will be finalized on the closing date, and that is what we were talking about before, that particular inventory.

Mr. Ansell: I would like to have that agreement or a copy of that agreement made. Is there any objection

(Deposition of LaRue C. Thomas.)

to doing that, along the same basis that we discussed on the other one?

Mr. Fredricks: I haven't even read it yet. I will have to read it to determine.

Mr. Ansell: Do you want to look at it right now? [50] That is, assuming that the figures are all blocked out. It is the agreement itself that I am interested in.

Mr. DeLuce: Did you call for it in your notice or subpoena?

Mr. Ansell: Yes, I did. I think item number three adequately covers that.

Mr. DeLuce: It is set forth specifically in our pleadings. You could have picked it up from that, and you didn't do so.

Mr. Ansell: All documents relating to the franchise, transfer of title to the premises, equipment, fixtures. That is a document relating to that. It certainly relates to transfer of fixtures and equipment.

Mr. Fredricks: Are you arguing with yourself or with me?

Mr. Ansell: With you.

Mr. DeLuce: You have to be specific in a subpoena, Herb.

Mr. Fredricks: There is nothing in here that would help you at all. You have everything you need in the bill of sale.

Mr. Ansell: I would like to have a copy of that document.

Mr. Fredericks: The document does, however, incorporate a copy of the lease which I have refused to give you, and a sublease. You are going to get another subpoena out, [51] anyway. Do that, and we will let

(Deposition of LaRue C. Thomas.)

the court rule on the materiality of it, because it is tied into the lease situation.

Mr. Ansell: For facility purposes, how is this labeled here? I would like to get the exact label.

Mr. Fredricks: Agreement between General Motors Corporation, Cadillac Motor Car Division, and LaRue C. Thomas, dated May 11.

Mr. Ansell: Mr. Reporter, the list of fixtures that is being prepared right now, I think we have identified as Exhibit A. Let us just refer, for identification purposes to the buy-and-sell agreement that is going to be furnished by Mr. Fredricks to myself as Exhibit B, not attached to the deposition.

Q. Were these premises, the shop portion closed from May 28 to June 7?

A. They were closed from June the 3rd, wasn't it?

Q. I might say that in your declaration on page 2 you say that Thomas Cadillac, Inc. began operation of the sales department on or about June 1, and operation of the service department on or about June 7.

A. That is correct.

Q. That is your best recollection? A. Yes.

Q. I think we were talking about the next event in the chain of events that led to the consummation of your [52] transaction with GMC. What next happened now after your meeting in North Hollywood?

Mr. Fredricks: What date was that?

Mr. Ansell: That is the April meeting we have been talking about.

Mr. DeLuce: April 28.

Mr. Ansell: April 28. That is correct.

(Deposition of LaRue C. Thomas.)

Mr. DeLuce: He just testified, the preliminary agreement of May 11.

Mr. Ansell: All right.

Q. Were there any other meetings during the month of May?

A. Not that I recall.

Q. Did you ever have any meeting with Mr. Pais?

A. Never.

Q. You know Mr. Pais, do you not?

A. I met him briefly.

Q. Has that been since June 7 or prior?

A. I think it was around the first of June. I don't remember. It was a real quick sort of thing. I was introduced to him and we spoke very briefly and he left.

Q. Do you recall ever meeting with Mr. Pais at any time before Cadillac ceased to operate these premises as a factory branch?

Mr. Fredricks: Well, I am going to have to object to the question as being an incorrect summary of the [53] testimony. You are talking about a meeting. Mr. Thomas has already testified that he met Mr. Pais on one occasion just briefly and said "Hello," and that was practically it.

The Witness: That is just about it.

Mr. Fredricks: There was no meeting as such, Herb.

Mr. Ansell: Q. This meeting that you have described, did this occur when Cadillac was still operating—

A. I don't remember. It was such a casual thing, I don't remember.

(Deposition of LaRue C. Thomas.)

Q. Do you recall every having any discussion with either Mr. Pais or any other representative of GMC, concerning the effect of the purchase upon the existing employee force?

A. At one time Mr. Hopkins told me that they were going to terminate all of the employees here.

Q. Do you recall when that was?

A. No.

Was this in a face-to-face meeting or by telephone?

A. Face-to-face meeting. It was just said by way of something, that all employees were going to be terminated, and that they were going to place as many of them as they could.

Q. Do you recall whether this statement was made before or after the interim agreement of May 11 was signed?

A. I don't remember. [54]

Q. Were you aware at any time before the end of May that Cadillac was signed to a contract with the Painters and Machinists Union?

A. I have known that for years.

Q. You knew there was an existing contract, did you not?

A. Yes, common knowledge.

Q. Did you know what the term of the contract was, the duration?

A. No.

Q. But you knew that one was in effect?

A. Yes. I assumed there was. I never saw it, but it was common knowledge.

Q. Do you recall having any discussions with representatives of GMC concerning the existing collective

(Deposition of LaRue C. Thomas.)

bargaining agreement with the Machinists and Painters Union? A. No.

Q. It never entered discussions that you had?

A. Never at any time.

Q. Referring now to item number four in the subpoena, do you have payroll records showing the names of employees employed both in the sales department and in the shop as of May 28, 1965?

A. No.

Mr. Fredricks: Just a minute. Referring to number four? [55]

Mr. Ansell: That is correct.

The Witness: I have no information on that.

Mr. Fredricks: We have no records.

Mr. Ansell: No list of employees at all?

Mr. Fredricks: No.

The Witness: No.

Mr. Ansell: Q. None whatever turned over to you by Cadillac? A. No.

Q. Just out of curiosity, are you saying that all of the employees that you hired subsequent to May 28, 1965, and just made up brand new social security information and payroll information and whatever—

A. A brand new company, we had to.

Q. I see. Do you know what Cadillac did with the payroll information they had—

A. No.

Q. —of the employee force on hand as of May 28th?

A. I have no knowledge, no interest.

Q. Directing you now to item number five, and I would ask for production of payroll records showing the names, rates of pay, and employment beginning date of

(Deposition of LaRue C. Thomas.)

all employees on the payroll at this establishment on and after May 28, 1965.

Mr. Fredricks: We have prepared that, Herb, with the exception of sales personnel, and I can see no [56] materiality as to sales personnel. Shop personnel, or the so-called unit people, yes, and I will get it for you.

Mr. Ansell: You are refusing to furnish any information of sales personnel on the ground of materiality?

Mr. Fredricks: On the ground of materiality, yes.

(A discussion was had off the record.)

Mr. Fredricks: With respect to item number five of your subpoena, your notice, I am handing you a copy of the hourly employees presently on the payroll and on the payroll as of June 7, 1965, showing their duties and their names and their pay, with asterisks on the side which indicates which employee was Cadillac Motor Car Division employee prior to June 1st, 1965.

Mr. Ansell: All right. Now, Counsel, may I ask you this: Do you include in this all employees who at any time since June 7 have been on the payroll, whether they have subsequently terminated or not?

Mr. Fredricks: I don't know. I would have to ask the person who procured it.

Mr. Ansell: I would like to know. I would be interested—

The Witness: What is your question again?

Mr. Ansell: Q. What I am interested in is all employees who have been on the payroll at any time since June 7, 1965.

(Deposition of LaRue C. Thomas.)

In other words, that would embrace people that [57] may have been hired and fired by you, possibly, or quit.

A. What is this list on this page here?

Q. This says "Presently On The Rolls."

Mr. Fredricks: As of June 1 and presently.

Mr. Ansell: All right. That answers it. Fine.

(A discussion was had off the record.)

Mr. Ansell: We have covered Exhibit A and Exhibit B. Exhibit C will be this payroll list that has just been furnished to me. Will you make copies of that and attach them to the deposition.

(Whereupon, the above-mentioned document was marked by the Notary Public as Petitioner's Exhibit C, and a copy is attached hereto.)

Mr. Ansell: Q. Let me ask you, Mr. Thomas, on these employees you indicate here a certain flat rate per hour that they are paid. Do they not get a percentage of the GMC labor charge that is published in a book each year? Is this not part of the compensation?

A. That is the compensation. If the flat rate schedule calls for two hours, they are paid two hours times that rate.

Q. I understood that there was a different rate for each particular job. I see it is a different time allowance for each job. A. Yes.

Mr. DeLuce: Right. [58]

Mr. Ansell: Q. Is the hourly rate figured by the classification that they are in?

A. Are we talking about mechanics now?

Q. I am trying to ascertain, for example, why a pick-up and delivery man gets \$2.20, and a polisher

(Deposition of LaRue C. Thomas.)

\$3.20. Is this something that is set by you, your firm, or does this relate to the book that is published by GMC?

A. General Motors, to my knowledge, have never set wage standards for their dealers.

Q. They set an estimated time allowance, do they not?

A. They have a time allowance for certain designated operations.

Q. I see. But then it is your business concern here that has set this rate, for example, \$2.20 for pick-up and delivery man and—

A. As a matter of fact, the guide manual that the corporation supplies us for the repair of automobiles is not necessarily followed by us.

Q. I understand it is a suggested time allowance.

A. This is right.

Q. But what I am getting at is, the actual flat rate per hour is set by Thomas Cadillac, Inc.?

A. That is right.

Q. Referring you to item number six, I would like a list of all supervisors, foremen and leadmen employed at [59] this establishment since May 28 and prior to May 28.

Mr. Fredricks: Let the record show I am handing Mr. Ansell a list of all supervisors and foremen in the shop employed in the service department as of 6/7/65, and I don't know if there has been any changes on that or not.

Mr. Ansell: You mean since 6/7/65?

Mr. Fredricks: The number is the same, but it might be different people, Herb. I am not sure.

(Deposition of LaRue C. Thomas.)

Are they still in the employ?

The Witness: As far as I know.

Mr. Fredricks: You might have to get that information from Mr. Coats.

Mr. Ansell: This list purports to be all of the supervisors; is that correct?

Mr. Fredricks: In the service department, the Unit.

Mr. Ansell: All right.

Mr. Fredricks: So-called Unit, that General Motor Corporation had.

Mr. Ansell: Mr. Reporter, would you mark this as Petitioner's next in order, please, and attach that to the deposition.

(Whereupon, the above-mentioned document was marked by the Notary Public as Petitioner's Exhibit D, and a copy is attached hereto.)

Mr. Ansell: Q. Referring you to Petitioner's Exhibit C were any of the people named on this exhibit in [60] the employ in some capacity at these premises prior to May 28, 1965?

A. Some of them were. I really wouldn't know. Let's see. Bud Holderman I know was employed before.

Q. Do you know in what capacity he worked? The same capacity, foreman?

A. Yes. And Philip Meckool was a foreman, and LaVerne Dickerson. Now, I don't know—oh, William Iest was also employed.

Q. Do you know in what capacity?

A. Foreman. James Heathington, I don't know. I don't know who he is.

Q. All right.

(Deposition of LaRue C. Thomas.)

A. William Hinman and Loyd Coats were not employed, I don't believe. Loyd Coats was a former employee, I mean was an employee of mine in the old store, and Hinman was brought in from the outside. He was a service manager from a Pontiac dealer.

Q. Who are the supervisory personnel in the sales department?

Mr Fredricks: Just a minute. At the present time?

Mr. Ansell: On and since May 28, 1965.

The Witness: Since June 1st, you mean?

Mr. Fredricks: I don't mind answering, Herb, but I don't like to clutter up the deposition and go to all the expense. Give me your materiality of it. [61]

Mr. Ansell: Well, I think for purposes of the issue in this case, of resolving it, I don't think that you can compartmentalize the establishment and say that we are not entitled to any information concerning the sales department simply because the contract that we are trying to enforce didn't cover sales.

I think we are entitled to look at it and get the overall picture to determine the issue of successor employer.

Mr. Fredricks: As I say, I have no objection, but I am getting tired of having the record cluttered up.

The Witness: General sales manager.

Mr. Ansell: Q. What is his name, sir?

A. Harry Sadler.

Q. Has Mr. Sadler been acting in that capacity since June 1st? A. Yes.

Q. Do you know whether he was at this establishment prior to that date? A. He was not.

Q. Where did he come from?

(Deposition of LaRue C. Thomas.)

A. He came from a leasing company.

Q. Who else?

A. Mr. James Rollins, sales manager.

Q. He has been on the payroll since the 1st of June, also? [62]

Q. Was he working here prior to that?

A. He was the assistant sales manager at Cecil Thomas & Sons.

A. Who else?

A. The new car sales, you have reference to?

Q. New car sales. A. That is it.

Q. How about used car sales?

A. Mr. Dale Rowe.

Q. What is his capacity?

A. He is general used car manager.

Q. Was he working here prior to—

A. No. He was with Cecil Thomas & Sons.

Q. Anybody else with used cars?

A. Wesley Ulgow, I believe his name is, U-l-g-o-w, or g-o. I don't know.

Q. In what capacity?

A. He is assistant used car manager.

Q. Was he working at this establishment prior?

A. Yes, he was.

Q. In the same capacity, so far as you know?

A. So far as I know, he was. I don't know.

Q. In addition to these gentlemen that you have named, how many new and used car salesmen does Thomas Cadillac employ? [63]

A. How many new and used?

Q. Yes, sir. A. God, I don't know.

Q. Do you have an approximate number?

(Deposition of LaRue C. Thomas.)

A. Thirty, I guess, twenty-eight.

Q. I might say this, your declaration states—well, it doesn't actually state, but you say sales personnel, 57 were retained out of 105.

A. Fifty-seven what?

Q. Let us take a look at it again here.

Mr. Fredricks: Yes. You have better take a look at it.

Mr. Ansell: Here is what I am referring to, page 2. It says the number of shop personnel hired normally worked for Cadillac Motor Car Division is 16, and total number of shop employees by Thomas Cadillac is 63.

In other words, 16 out of the present 63 shop employees, I gather, formally worked when Cadillac ran this as a factory branch; is that correct?

Mr. Fredricks: This was on or about July 9, Herb, this declaration was made.

Mr. Ansell: All right. I am assuming that as of the date of the declaration. I am correct as of that date?

The Witness: That would be my impression.

Mr. Ansell: Q. You say the total number of employees is 168 of which 73 were former employees, leaving us with, I assume—well, what is the total number of sales [64] personnel, the approximate number that you had as of June 1st, both new car and used car aside from the supervisors?

A. Around 25 or 30, but they weren't all employees—former employees here.

Q. That is used and new car; is that correct?

A. Yes. It would be in that area.

Q. How many of those 25, approximately, were employed prior to June 1, 1965, at this establishment?

A. I would just guess now maybe 15, 17.

(Deposition of LaRue C. Thomas.)

Mr. Ansell: Is there an objection to furnishing that information, specifically, the exact number?

Mr. Fredricks: You have asked the witness and he has given you his best recollection.

Mr. Ansell: He has given me his estimate, and I appreciate that, and I would like to get the exact number, if possible.

Mr. Fredricks: I don't think sales have anything to do with your lawsuit at all. I haven't objected to this, but I am not going to furnish anything to you that you haven't requested. You are taking this man's deposition, and he is answering your questions to the best of his ability.

Mr. Ansell: Q. What is the name of the general sales manager? A. Harry Sadler.

Q. Who is the credit manager? [65]

A. Dearborn.

Q. What is his first name? A. Edward.

Q. Was he employed at this establishment prior?

A. No.

Q. Where did he come from?

A. Cecil Thomas & Sons.

Q. What is the name of the general parts manager?

A. Sigmund Erickson.

Q. Was he employed here prior to June 1st?

A. No.

Q. Where is he from?

A. Cecil Thomas & Sons.

Q. Then in your declaration you make a separate classification for parts manager, general parts manager Erickson, then you say parts manager.

A. Ed Jones.

(Deposition of LaRue C. Thomas.)

Q. Did he work here prior to June 1st?

A. No.

Q. Was he with Cecil Thomas? A. Yes.

Q. These shop personnel that were hired on or about June 7, 1965, by Thomas Cadillac, Inc., from what sources were these people obtained?

A. Every source we had in our command, other dealers, employment agencies, former personnel, everyone. We [66] interviewed a lot of people.

Q. Did you advertise in the newspapers?

A. No.

Q. Did Thomas Cadillac, Inc. send out any type of notices or communications in connection with securing new employees? I appreciate you told me you didn't advertise in the newspapers. I am now asking you if there is any other written communication used by your company to secure new employees?

A. Not that I have any knowledge of.

Q. Who would be the person in charge of setting policy in the maintenance and the new car get-ready department.

Mr. Fredricks: By "policy," you mean what?

Mr. Ansell: Policy relating to general operating procedures, disciplinary, anything concerning—

Mr. Fredricks: Are conditions of employment included in this?

Mr. Ansell: Well, not wage rates, no. I am not talking about that, but operating procedure here at the premises.

Q. Would it be yourself?

A. You have lost me.

Mr. Fredricks: You lost me, too.

(Deposition of LaRue C. Thomas.)

Mr. Ansell: Q. All right. Let us just refer to item number nine here. I have called for records, notes [67] and memoranda of any type relating to the mode and method of operating the maintenance and new car get-ready service sections.

To give you as an example, hiring and firing policies, promotions.

A. We have a factory policy as far as the servicing of the car is concerned. Is that what you have reference to?

Q. I was referring primarily to hiring and firing policies, promotion, assignments of work, chain of authority.

A. That is all out of our service department. It is all the same breed of cats.

Q. Would Mr. Coats be the person in charge of that? A. Yes.

Q. Have you, yourself, since Thomas Cadillac began functioning at this location issued any type of memoranda or the use of your supervisors or your rank and file employees? A. No.

Q. Concerning the manner in which they should conduct themselves or anything to be done on the premises?

A. The only thing I am aware of is a sort of a creed of conduct that I have seen around that the old Cadillac division had. I haven't done anything.

Q. You mean something that is posted on the bulletin board? [68]

A. Well, there are some old, dusty, moth-eaten signs around that I have seen, but we haven't done

(Deposition of LaRue C. Thomas.)

anything, and maybe these others have been destroyed, but now I don't know. We haven't done anything.

Q. You don't know whether those signs are still up or not?

A. No, I don't. Actually, I would like this off the record.

(A discussion was had off the record.)

Mr. Ansell: Q. Incidentally, when this was a factory branch of Cadillac were used Cadillacs sold?

A. Were what?

Q. Were used automobiles sold, Cadillac automobiles? A. Yes.

Q. In the same location across the street where you are selling them now? A. Yes.

Q. Do you recall ever issuing, yourself, any directives to your supervisors concerning some change in policy in some regard?

Mr. Fredricks: You just asked him that, Herb.

The Witness: I have never issued anything.

Mr. Ansell: Q. You pretty well leave the matters of your personnel and the way in which they will operate to Mr. Coats; is that correct?

A. In that department, yes. [69]

Q. In the maintenance and get-ready department?

A. Yes.

Mr. Fredricks: Service department.

Mr. Ansell: Service department would be better. All right.

Q. Since June 1st, 1965 has Thomas Cadillac, Inc. purchased any equipment for use in operating the business? By that I mean parts, accessories, anything.

(Deposition of LaRue C. Thomas.)

Mr. Fredricks: Of course, they have purchased parts and accessories from Cadillac Motor Car Division. That is the business they are in, Herb. What is the materiality of that?

Mr. Ansell: I will refer you to—

Mr. Fredricks: I know what you are looking at.

Mr. Ansell: I will refer you to—well, actually, by error we made a repeat here. Items ten and twelve appear to be the same.

Do you have books, records and documents relating to purchase of any equipment since May 28, 1965?

Mr. Fredricks: Of course we have books and records, if we purchased any. Any parts that we purchased from General Motors Corporation, or accessories, of course, we have books and records on them.

Mr. Ansell: Let me ask you this—

Mr. Fredricks: What does that have to do with the petition to compel arbitration? Just tell me that, Herb. [70]

Mr. Ansell: Do you want this on the record?

Mr. Fredricks: Yes, sir.

Mr. Ansell: All right. Put it on. We can spend an awful lot of time here with these kind of statements, and maybe they sound nice and all that, but when you look at them in the cold dim of the night, you know, they just clutter, just something to read. If you have an objection, if you are going to instruct, if you are going to take a legal position it is irrelevant and immaterial, then do so, but in my view this is material to our case. Now, let us see if we can zero in a little bit.

(Deposition of LaRue C. Thomas.)

Aside from accessories and automotive parts which you purchased from time to time to, I assume, to replenish your supply, have you purchased any major pieces of equipment?

Mr. Fredricks: I don't mind your answering that question, LaRue. Go ahead.

Mr. Ansell: I recognize I am using a very broad term here.

The Witness: The only thing I am aware of is a vacuum cleaner that cost about \$2,000. I am sure there are other items and probably a lot of them, but I am not aware of them, of a smaller amount, like electric drills, you know, odds and ends.

Mr. Ansell: Q. What you would classify as smaller tools? [71]

A. Yes, small tools that ordinarily won't go into an inventory go into what we call a shop expense.

But so much of the equipment we bought here was worn out, and obsolete, that it is a constant replacement. We have a drum lathe that went out, and that is another \$1,800, \$2,000 if we can't get it repaired. I mean we just bought a lot of junk.

Q. In other words, you anticipate in the future that you will be replacing a lot of this equipment?

A. Yes, we do.

Q. That is shop worn?

A. Yes.

Q. But at the present time your only recollection is that you purchased a vacuum cleaner by way of a large piece of equipment?

A. Of a large piece, yes.

Q. Is the service department still functioning in the same physical location of the premises where it functioned prior to May 28th?

A. Yes.

Q. And the sales department is in the same physical place? A. Yes.

Q. As part of your arrangement with GMC did you or Thomas Cadillac, Inc. acquire any interest in other properties? [72] A. No.

Q. Did you acquire from GMC any permits?

A. No.

Q. Licenses? A. No.

Q. Tradenames? A. No.

Q. Trademarks? A. No.

Q. As part of your arrangement with GMC did any stock transfer from General Motors to either yourself or to your corporation? A. No.

Q. Were there any monetary liabilities owed by GMC that Thomas Cadillac, Inc. incurred?

A. No.

Q. Did Thomas Cadillac, Inc. take over any existing contracts with customers relating to the sales of cars? A. No.

Q. Incidentally, perhaps, Burt, you can help on this, the general procedure on handling these conditional sales contracts is, I assume, to have them handled through a bank; is that correct? Did Cadillac handle their own?

Mr. Fredricks: You mean when they sell a car?

Mr. Ansell: Yes.

Mr. Fredricks: Through a bank or GMAC, or PF or some [73] finance company.

(Deposition of LaRue C. Thomas.)

Mr. Ansell: But this division here of Cadillac, when it was a division of Cadillac, it did not handle its own paper, I assume?

Mr. Fredricks: I would have no way of knowing that, Herb.

Mr. Ansell: Q. You don't know this?

A. I can tell you, to the best of my knowledge, it was handled by two different lending institutions, like GMAC and United California Bank.

Mr. Ansell: Are there any particular institutions that Thomas Cadillac, Inc. uses to handle its paper?

Mr. Fredricks: I am going to object to that as being completely immaterial to the issues in this case and instruct the witness not to answer.

Mr. Ansell: Q. Were any customer lists turned over to you, to your company? A. No.

Q. You mean you were never made aware of the names of any persons that had formerly purchased Cadillacs?

A. Oh, yes. Those files, of an obsolete nature, we have had a girl working for two months to make a new list.

Q. Well, would it be a fair statement to say that the name of every person that had formerly purchased a Cadillac, at least back for some period of time from the 1076 street address was made available to Thomas Cadillac, [74] Inc.?

Mr. Fredricks: You mean by General Motors?

The Witness: I don't know whether it was or not. We wouldn't rely upon that, because it wouldn't have any value whatsoever. If we want a list, there is only one way to get a list, and that is to call Commercial

(Deposition of LaRue C. Thomas.)

Service in Long Beach and order a list that will be up to date, like today. If I sold you a car two years ago, for Christ's sake, you might have moved four times since then, or you may leave the state, so those lists of that nature are valueless.

Q. Assuming they are valueless, nonetheless, the information was furnished to you, was it not?

A. I don't know whether it was or not. I don't think we have any interest in it.

Q. In any of the agreements signed between yourself and Cadillac is there contained a covenant not to compete on the part of GMC? A. No.

Mr. Ansell: I am willing to stop the thing right now. I am not going to close the deposition. I am not through. I am going to have some more questions. First of all, we will have to test out your refusal on some of these items here, so I think for that reason alone I wouldn't want to close it.

I would suggest this, that we postpone this matter [75] to a mutually convenient date after we have gotten a determination on some of these items.

Mr. Fredricks: Will you be in town for a while?

The Witness: I will be back in town Monday morning.

Mr. Ansell: There may be a few other questions to ask.

The Witness: I would be. October is a little spotty. I am going to be probably out the last week of October for a week.

Mr. Ansell: All right. I am sure we can arrange it mutually. [76]

State of California, County of Los Angeles—ss.

I, Willard Haas, CSR, a Notary Public in and for the County of Los Angeles, State of California, do hereby certify;

That prior to being examined, the witness named in the foregoing deposition, to wit: LaRue C. Thomas, was by me duly sworn to testify the truth, the whole truth and nothing but the truth;

That said deposition was taken pursuant to Notice at the time and place therein set forth, and was taken down by me in shorthand and thereafter reduced to type-writing under my direction.

I further certify that I am not interested in the event of the action.

Witness my hand and seal this day of September, 1965.

Notary Public in and for the County of
Los Angeles, State of California. [77]

Admitted in Evidence 2-24-66.

PETITIONERS' EXHIBIT A.

Schedule A to Bill of Sale
Effective as of June 1, 1965,
Between General Motors
Corporation (Cadillac
Motor Car Division) and
Thomas Cadillac, Inc.

Los Angeles [Illeg.] Branch
[Illegible]
[Illegible]
Detail Supporting Disposal
Request as of May 31, 1965

Pet. Ex. A.
Haas, N. P.
6/19/6...
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Asset Tag. No.	Description	Date Acqd.	Account	Gross Value
M133-134	Crane System	1-49	32015403	\$ 125.66
M135, 6, 7, 8	"	"	"	585.04
M139-140	Crane System	"	"	133.90
M141	Track—Overhead	"	"	36.05
M142, 3, 4, 5, 6, 7, 8	Rack Alignment Convertible	"	"	669.50
M149	Drill, Floor	"	32015401	241.02
M150	Grinder, Bench Pedestal Base	"	"	20.35
M151	Press, Arbor Pedestal Base	"	"	20.60
M152	Lathe—Engine	"	"	334.75
M153-154	Crane System	"	32015403	120.51
M156	Bench—Steel	"	32015411	118.45
M157	Cabinet, Steel	"	32015411	37.08
M158	"	"	"	37.60
M159	Bin, Steel	"	"	45.09
M160	"	"	"	45.09
M161	"	"	"	45.09
M162	"	"	"	45.09
M163	"	"	"	45.09
M164	Bin, Steel	"	"	45.09
M165	"	"	"	45.09
M166	"	"	"	45.09
M167	"	"	"	45.09
M168	Bench	"	"	61.80
M169	Desk, Pine	"	"	26.78
M178	Piston Aligner	"	32015403	20.60
M184	73 Lin. Ft. Wire Encl.	"	32015411	288.40
M196	Screen—Window Safety	"	"	133.90
M197	Bench, Steel	"	"	39.14
M198	"	"	"	39.14
M199	"	"	"	37.08
M200	Bench, Steel	"	"	37.08
M201	"	"	"	37.08
M202	Cabinet, Steel	"	"	26.78
M203	Bench, Steel	"	"	37.08
M204	"	"	"	32.96
M205	"	"	"	30.90

Asset Tag. No.	Description	Date Acqd.	Account	Gross Value
				\$
M206	"	3-49	32015401	37.08
M207	"	"	"	37.08
M208	"	"	"	37.08
M209	"	"	"	37.08
M211	Cabinet, Steel	"	"	57.68
M212	"	"	"	51.50
M213	"	"	"	67.98
M218	Bench, Steel	"	"	10.30
M223	Jack, 4 Ton Hyd.	"	32015403	61.80
M224	"	"	"	61.80
M225	"	"	"	61.80
M231	Stand—Cabinet Base	"	32015411	25.75
M234	"	"	"	25.75
M245	Lubricator—Alemite Portable	"	32015402	25.75
M253	Lubrigun	1-49	32015402	103.00
M254	Pump, Transfer Pneu.	"	32015411	87.55
M255	Furnace	"	32015402	10.30
M283	Truck—Welders	"	32015402	10.30
M285	Cleaning Apparatus	"	"	386.25
M286	Crane System	"	32015403	251.32
M287	Trolley & Lifting Hook	"	32015403	45.84
M288	"	"	"	45.84
M293	Bench, Steel	"	32015411	30.90
M294	Grinder—Bench	"	32015401	76.20
M295	Table	"	32015411	9.27
M297	Cabinet	"	"	5.15
M302	Safety Screen	"	"	72.10
M306	Bench	"	"	46.35
M310	Cabinet—Steel	"	"	61.29
M311	Cabinet—Steel	"	"	61.29
M316	Bench	"	"	22.66
M317	Bench	"	"	25.75
M320	4 Ton Hydraulic Jack	"	32015403	97.85
M321	"	"	"	92.70
M322	Jack Roll-A-Car	"	"	82.40
M323	"	"	"	82.40
M328	Acetylene Gas Welder	"	32015402	66.95
M342	Jack—4 Ton Hydraulic	"	32015403	46.35
M346	Brake Band Machine	"	32015401	45.32
M347	Stand—Cab—Base	"	32015411	25.75
M350	Truck—Battery	"	32015403	6.18
M352	Battery Charger	"	32015401	46.35
M355	"	"	"	20.60
M362	Cabinet—Steel	"	32015411	75.19
M363	"	"	"	61.29
M375	Wire Enclosure, 2 gates, counter	"	"	252.35
M376	Enclosure; Wall Bd., Sash Door	"	"	169.95

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Asset Tag. No.	Description	Date Acqd.	Account	Gross Value
M379	Bin—Steel	1-49	32015411	\$ 32.04
M380	"	"	"	32.04
M381	"	"	"	32.04
M382	"	"	"	32.04
M383	"	"	"	32.04
M384	"	"	"	32.04
M385	"	"	"	32.04
M386	"	"	"	32.04
M387	"	"	"	32.04
M394	"	"	"	30.90
M395	Tester, Radio	"	"	51.50
M401	Bin, Steel	"	"	36.14
M402	Bin, Steel	"	"	36.14
M403	Wire Enclosure (counter)	"	"	128.24
M410	Bench—Steel	"	"	20.60
M411	Bench—Steel	"	"	30.90
M412	"	"	"	20.60
M413	Bench	1-49	32015411	20.60
M414	Cabinet	"	"	70.56
M415	Cabinet	"	"	61.29
M416	Bench	"	"	20.60
M425	Jack	"	32015403	82.40
M428	Pump	"	32015402	185.40
M432	Pump	"	32015411	87.55
M444	Jack	"	32015403	87.55
M445	Jack	"	"	87.55
451	Pipe Rack	"	32015411	42.31
453	Stock Rack	"	"	42.31
454	Stock Rack	"	"	42.31
455	Stock Rack	"	"	42.31
456	Stock Rack	"	"	42.31
457	Stock Rack	"	"	42.31
458	Stock Rack	"	"	42.31
459	Stock Rack	"	"	42.30
460	Stock Rack	"	"	42.30
461	Stock Rack	"	"	42.30
462	Stock Rack	"	"	42.30
463	Stock Rack	"	"	42.30
464	Stock Rack	"	"	42.30
465	Stock Rack	"	"	42.30
466	Stock Rack	"	"	42.30
467	Stock Rack	"	"	42.30
468	Stock Rack	"	"	42.30
469	Stock Rack	"	"	42.30
470	Stock Rack	"	"	42.30
471	Stock Rack	"	"	42.30
472	Stock Rack	"	"	42.30

Asset Tag. No.	Description	Date Acqd.	Account	Gross Value
				\$
473	Stock Rack	1-49	32015411	42.30
474	Stock Rack	"	"	42.30
475	Stock Rack	"	"	42.30
476	Stock Rack	"	"	42.30
477	Stock Rack	"	"	42.30
478	Stock Rack	"	"	42.30
479	Stock Rack	"	"	42.30
480	Stock Rack	"	"	42.30
481	Stock Rack	"	"	42.30
482	Stock Rack	"	"	42.30
483	Stock Rack	"	"	42.30
484	Stock Rack	"	"	42.30
485	Stock Rack	"	"	42.30
488	Stock Rack	"	"	42.30
489	Pipe Rack	"	"	42.30
490	Stock Rack	"	"	42.30
491	Stock Rack	"	"	42.30
492	Stock Rack	"	"	42.30
505	Pine Rack	"	"	15.45
512	Shop Stands	"	"	12.36
513	Portable Scale Platform	"	"	20.60
M514	Parcel Post Scale-Meter	1-49	32015411	206.00
M516	Pipe Rack Stock	1-49	32015411	42.30
M517	Pipe Frames Pine Case	"	"	15.45
M549	Air Compressor	"	32015420	231.75
M550	Air Compressor	"	"	5,150.00
M563	Hydraulic Jack	"	32015403	87.55
M564	Steel Bench	"	32015411	25.75
M565	Steel Bench	"	"	14.42
M566	Hydraulic Jack	"	32015403	87.55
M567	Steel Cabinet	"	32015411	5.15
M568	Steel Desk	"	"	15.45
M574	Steel Bench	"	"	25.75
M578	Water Heater	"	32015420	77.25
M583	Steel Bench	"	32015411	28.84
M584	Steel Cabinet	"	"	65.92
M585	Growler	"	32015402	14.42
M590	Lathe, Bench	"	32015401	149.35
M591	Ped. Base Grinder	"	"	10.30
M614	Steel Stock Bin	"	32015411	41.33
M751	"	"	"	41.33
M752	"	"	"	41.33
M791	"	"	"	41.33
M792	"	"	"	41.33
M793	"	"	"	41.33
M799	"	"	"	41.33
M802	U-Graph Bds Sched	"	"	81.11

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Asset Tag. No.	Description	Date Acqd.	Account	Gross Value
				\$
M803	"	1-49	32015411	81.11
M847	Steel Bench	"	"	20.60
M848	Steel Bench	"	"	20.60
M849	Steel Cabinet	"	"	7.73
M890	Highboy and Pump	"	32015402	15.45
M904	Tube System	"	32015411	2,060.41
M916	Master Dist. Tester	3-49	32015403	597.40
M917	Valve Grinding Machine	"	32015401	359.99
M918	Sioux Cabinet	"	32015411	108.66
M919	Hard Set Grinder	"	32015401	164.54
M920	Benchgrinder	"	"	100.94
M924	Heat Lamp	4-49	32015402	74.34
M930	Steel Bench	3-49	32015411	51.50
M931	Steel Bench	"	"	51.50
M932	"	"	"	51.50
M933	"	"	"	51.50
M934	"	"	"	51.50
M935	"	"	"	51.50
M936	"	"	"	51.50
M937	"	"	"	51.50
M938	"	"	"	51.50
M939	"	"	"	51.50
M940	"	"	"	51.50
M941	"	"	"	51.50
M942	Bench, Steel	3-49	32015411	51.50
M943	Bench, Steel	3-49	"	51.50
M944	Bench, Steel	3-49	"	51.50
M945	Bench, Steel	3-49	"	51.50
M946	Bench, Steel	3-49	"	51.50
M947	Bench, Steel	3-49	"	51.50
M948	Bench, Steel	3-49	"	51.50
M949	Bench, Steel	3-49	"	51.50
M950	Bench, Steel	3-49	"	51.50
M951	Bench, Steel	3-49	"	51.50
M952	Bench, Steel	3-49	"	51.50
M953	Bench, Steel	3-49	"	51.50
M954	Bench, Steel	3-49	"	51.50
M955	Bench, Steel	3-49	"	51.50
M956	Master Meter Tester	3-49	32015403	638.60
M961	Master Dist. Tester	3-49	"	597.40
M962	Lincoln Servmobile	3-49	32015401	364.10
M963	Lincoln Servmobile	3-49	"	364.10
M964	Lincoln Servmobile	3-49	"	364.10
M965	Vacit Cleaner	3-49	32015411	180.93
M966	Bench Grinder	3-49	32015401	100.94
M967	Bench Grinder	3-49	"	100.94
M968	Bench Grinder	3-49	"	100.94

Asset Tag. No.	Description	Date Acqd.	Account	Gross Value
				\$
M969	Bench Grinder	3-49	32015411	100.94
M971	Pin Honing Machine	3-49	"	216.30
M972	Carb-U-Tator	3-49	32015402	42.02
M973	Carb-U-Tator	3-49	"	42.02
M974	Carb-U-Tator	3-49	"	42.02
M975	Carb-U-Tator	3-49	"	42.02
M976	Carb-U-Tator	3-49	"	42.02
M977	Carb-U-Tator	3-49	"	42.02
M978	Carb-U-Tator	3-49	"	42.02
M979	Carb-U-Tator	3-49	"	42.02
M980	Carb-U-Tator	3-49	"	42.02
M981	Carb-U-Tator	3-49	"	42.02
M982	Carb-U-Tator	3-49	"	42.02
M983	Carb-U-Tator	3-49	"	42.02
M984	Carb-U-Tator	3-49	"	42.02
M985	Carb-U-Tator	3-49	"	42.02
M986	Carb-U-Tator	3-49	"	42.02
M987	Carb-U-Tator	3-49	"	42.08
M988	Utility Cleaner	3-49	"	48.93
M989	Utility Cleaner	3-49	"	48.93
M990	Utility Cleaner	3-49	"	48.92
M991	Lathe, Brake Drum	3-49	32015401	901.25
M991A	Grinder Attachment Lathe	3-49	"	200.85
M1006	Jack	3-49	32015403	91.67
M1010	Jack	3-49	"	91.67
M1011	Jack	3-49	"	91.67
M1014	Jack	3-49	"	91.67
M1015	Jack Walker	3-49	32015403	91.67
M1016	Press, Manly 40 Ton	"	32015401	396.55
M1017	Bear Frame Attachment	"	32015403	674.65
M1018	Black Hawk Ports Power	"	"	349.74
M1019	Brake Lining Machine	"	32015401	242.05
M1020	Heat Lamp, Fostoria Infra Red	4-49	32015402	74.37
M1021	Lathe	"	32015401	119.42
M1022	Drill Press	"	"	133.90
M1023	Allen Press	"	"	92.96
M1024	Grigg Brake Bleeder Flusher	"	32015402	47.90
M1025	" " " Tank	"	"	25.49
M1027	Arc Welder, Marquette	3-49	"	216.30
M1028	Marquette Welding	"	"	20.60
M1029	" "	"	"	111.55
M1031	Allen Undercutter	4-49	32015401	49.90
M1032	Allen Growler	"	32015402	41.61
M1033	Atlas Moter	"	32015421	32.19
M1035	Armature Chuck Kit	"	32015403	21.42
M1036	Atlas Undercutter & Attach.	"	32015401	44.24
M1037	Parts Toter	"	32015403	21.63

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Asset Tag. No.	Description	Date Acqd.	Account	Gross Value
				\$
M1038	" "	4-49	32015403	21.63
M1039	Tool Toter	"	"	42.23
M1040	" "	"	"	42.23
M1041	" "	"	"	42.23
M1042	" "	"	"	42.23
M1043	" "	"	"	42.23
M1044	" "	"	"	42.23
M1045	" "	"	"	42.23
M1046	" "	"	"	42.23
M1060	Tire Changer	3-49	32015401	169.95
M1061	Lathe, Atlas	"	"	349.69
M1062	Chain Hoist, 1 Ton Budgit	4-49	32015403	80.97
M1062A	King Trolley	"	"	13.70
M1063	Chain Hoist, 1 Ton Budgit	"	"	80.95
M1063A	King Trolley	"	"	13.70
M1064	Chain Hoist, 1 Ton Budgit	"	"	80.95
M1064A	King Trolley	"	"	13.70
M1065	Locker, Steel	3-49	32015411	16.86
M1066	"	"	"	16.28
M1067	"	"	"	16.28
M1068	"	"	"	16.28
M1069	"	"	"	16.28
M1070	"	"	"	16.28
M1071	"	"	"	16.28
M1072	"	"	"	16.28
M1073	"	"	"	16.28
M1074	"	"	"	16.28
M1075	"	"	"	16.28
M1076	"	"	"	16.28
M1077	"	"	"	16.28
M1078	"	"	"	16.28
M1079	"	"	"	16.28
M1080	"	"	"	16.28
M1081	"	"	"	16.28
M1082	"	"	"	16.28
M1083	"	"	"	16.28
M1084	"	"	"	16.28
M1085	"	"	"	16.28
M1086	"	"	"	16.28
M1087	"	"	"	16.28
M1088	"	"	"	16.28
M1089	"	"	"	16.28
M1090	"	"	"	16.28
M1091	"	"	"	16.28
M1092	"	"	"	16.28

Asset Tag. No.	Description	Date Acqd.	Account	Gross Value
M1093	"	3-49	32015411	\$ 16.28
M1094	"	"	"	16.28
M1095	"	"	"	16.28
M1096	"	"	"	16.28
M1097	"	"	"	16.28
M1098	"	"	"	16.28
M1099	"	"	"	16.28
M1100	"	"	"	16.28
M1101	"	"	"	16.28
M1102	"	"	"	16.28
M1103	"	"	"	16.28
M1104	"	"	"	16.28
M1105	"	"	"	16.28
M1106	"	"	"	16.28
M1107	"	"	"	16.28
M1108	"	"	"	16.28
M1109	"	"	"	16.28
M1110	"	"	"	16.28
M1111	"	"	"	16.28
M1112	"	"	"	16.28
M1113	"	"	"	16.28
M1114	"	"	"	16.28
M1115	"	"	"	16.28
M1116	Steel Locker	3-49	32015411	16.28
M1117	"	"	"	16.28
M1118	"	"	"	16.28
M1119	"	"	"	16.28
M1120	"	"	"	16.28
M1121	"	"	"	16.28
M1122	"	"	"	16.28
M1123	"	"	"	16.28
M1124	"	"	"	16.28
M1125	"	"	"	16.28
M1126	"	"	"	16.28
M1127	"	"	"	16.28
M1128	"	"	"	16.28
M1129	"	"	"	16.28
M1130	"	"	"	16.28
M1131	"	"	"	16.28
M1132	"	"	"	16.28
M1133	"	"	"	16.28
M1134	"	"	"	16.28
M1135	"	"	"	16.28
M1136	"	"	"	16.28
M1137	"	"	"	16.28

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Asset Tag. No.	Description	Date Acqd.	Account	Gross Value
M1138	"	3-49	32015411	\$ 16.28
M1139	"	"	"	16.28
M1140	"	"	"	16.28
M1141	"	"	"	16.28
M1142	"	"	"	16.28
M1143	"	"	"	16.28
M1144	"	"	"	16.28
M1145	"	"	"	16.28
M1146	"	"	"	16.28
M1147	"	"	"	16.28
M1148	"	"	"	16.28
M1149	"	"	"	16.28
M1150	"	"	"	16.28
M1151	"	"	"	16.28
M1152	"	"	"	16.28
M1153	"	"	"	16.28
M1154	"	"	"	16.28
M1155	"	"	"	16.28
M1156	"	"	"	16.28
M1157	"	"	"	16.28
M1167	"	"	"	16.28
M1168	"	"	"	16.28
M1169	"	"	"	16.28
M1170	"	"	"	16.28
M1171	"	"	"	16.28
M1172	"	"	"	16.28
M1173	"	"	"	16.28
M1174	"	"	"	16.28
M1175	Berger Steel Locker	3-49	32015411	16.28
M1176	"	"	"	16.28
M1177	"	"	"	16.28
M1178	"	"	"	16.28
M1179	"	"	"	16.28
M1180	"	"	"	16.28
M1181	"	"	"	16.28
M1182	"	"	"	16.28
M1183	"	"	"	16.28
M1184	"	"	"	16.28
M1185	"	"	"	16.28
M1186	"	"	"	16.28
M1187	"	"	"	16.28
M1188	"	"	"	16.28
M1189	"	"	"	16.28
M1190	"	"	"	16.28
M1191	"	"	"	16.28
M1192	"	"	"	16.28
M1193	"	"	"	16.28

Asset Tag. No.	Description	Date Acqd.	Account	Gross Value
				\$
M1194	"	3-49	32015411	16.28
M1195	"	"	"	16.28
M1196	"	"	"	16.28
M1197	"	"	"	16.28
M1198	"	"	"	16.28
M1199	"	"	"	16.28
M1201	Body & Fender Panel Stand	"	"	715.85
M1202	Signal Generator	"	32015420	174.28
M1204	Simpson V.O. MM	"	32015403	40.11
M1205	Platform Dollies	"	"	54.86
M1206	"	"	"	54.80
M1207	"	"	"	54.80
M1208	Visualiner	"	32015401	1,431.52
M1209	Background	"	"	306.76
M1210	John Bean Tools	"	"	229.51
M1211	Wheel Balancer	"	"	378.86
M1212-13	Boring Bar w/Sucker Outer	"	"	746.79
M1213	Wheel Spinner	"	"	105.40
M1214	Work Bench	4-49	32015411	51.50
M1215	Work Bench	"	"	51.50
M1216	"	"	"	51.50
M1217	"	4-49	"	72.10
M1218	"	"	"	72.10
M1219	"	4-49	"	72.10
M1220	"	"	"	72.10
M1221	"	"	"	72.10
M1222	"	"	"	51.50
M1223	"	"	"	72.10
M1224	"	"	"	72.10
M1225	"	"	"	43.26
M1226	"	"	"	43.26
M1227	Work Bench	4-49	32015411	43.26
M1228	Work Bench	"	"	"
M1229	Work Bench	"	"	"
M1230	Work Bench	"	"	"
M1231	"	"	"	"
M1232	"	"	"	"
M1233	"	"	"	"
M1234	"	"	"	"
M1235	"	"	"	"
M1236	"	"	"	"
M1237	"	"	"	"
M1238	"	"	"	"
M1239	"	"	"	"
M1240	"	"	"	"
M1241	"	"	"	"
M1245	Storage Cabinets	"	"	66.38

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Asset Tag. No.	Description	Date Acqd.	Account	Gross Value
M1246	"	4-49	32015411	\$ 66.44
M1247	"	"	"	"
M1248	"	"	"	"
M1249	"	"	"	"
M1250	"	"	"	"
M1251	"	"	"	"
M1252	"	"	"	"
M1253	"	"	"	"
M1254	"	"	"	"
M1255	"	"	"	"
M1256	"	"	"	"
M1257	"	"	"	"
M1258	"	"	"	"
M1261	Surfacer Grinder	"	32015401	921.85
M1262	Conv. Auto Shelving	3-49	32015411	48.80
M1262A	"	"	"	"
M1262B	"	"	"	"
M1262C	"	"	"	"
M1263	"	"	"	"
M1263A	"	"	"	"
M1263B	"	"	"	"
M1263C	"	"	"	"
M1264	"	"	"	63.19
M1265	"	"	"	48.80
M1265A	"	"	"	"
M1265B	"	"	"	"
M1265C	"	"	"	"
M1266	Singer Sewing Machine	"	32015402	312.91
M1267	"	"	"	321.67
M1287	Panel and Call Board	12-49	32015411	1,372.14
M1294	Conv. Steel Bin	"	"	67.10
M1300	"	"	"	67.11
M1303	"	"	"	"
M1308	Waste Oil Tank & Fittings	2-50	32015402	577.77
M1311	Twin Post Hoist	2-50	32015403	965.83
M1312	"	"	"	965.83
M1313	"	"	"	965.83
M1314	"	"	"	965.83
M1315	"	"	"	965.83
M1316	"	"	"	965.83
M1317	Hose Reel Banks with Equipment	"	32015402	1,182.39
M1318	Hose Reel Banks with Equipment	"	"	1,182.39
M1319	"	"	"	1,243.45
M1320	"	"	"	1,243.45
M1321	Graco Deluxe Merchandisers	"	32015411	363.13
M1323	"	"	"	363.13
M1324	"	"	"	363.13

Asset Tag. No.	Description	Date Acqd.	Account	Gross Value
				\$
M1325	"	2-50	32015411	363.13
M1326	"	"	"	363.13
M1327	Conveyor	4-50	32015403	6,141.48
M1328	Welding & Cutting Outfit	11-50	32015402	96.38
M1332	Joyce 2 Ton Floor Jack	"	32015403	85.39
M1333	Graco Porto Luber	"	32015402	491.62
M1334	Sioux Bench Grinder	"	32015401	48.39
M1335	Waste Oil Drain	"	32015402	39.86
M1336	Pressteel Bench	11-50	32015411	45.64
M1337	"	"	"	45.64
M1338	"	"	"	45.64
M1339	Pressteel Tool Toter	"	32015403	60.65
M1340	Westinghouse Compressor	"	32015420	593.70
M1342	Joyce Utility 2 Post Lift	"	32015403	728.93
M1343	Bay Lift, Passenger Model	"	"	291.08
M1345	BH & H Battery Charger	"	32015401	159.91
M1346	G.H. Hein Werner Jack	"	32015403	135.95
M1347	Johnsen Transmission Jack	"	"	87.32
M1350	Berger Automotive Bulk Bin	3-51	32015411	71.81
M1355	Undercoating Gun	4-51	32015402	208.36
M1356	Johnsen Transmission Jack	"	32015403	101.95
M1357	Shepard Thomson Brake Lining Mach.	4-51	32015401	244.90
M1358	Floor Jack	5-51	32015403	142.31
M1359	Porto Power Unit	6-51	32015403	203.12
M1360	Berger Convertible Steel Bin	1-52	32015411	93.90
M1361	Berger Convertible Steel Bin	"	"	93.90
M1362	"	"	"	93.91
M1363	Berger Steel Long Parts Bin	"	"	93.91
M1364	"	"	"	93.93
M1365	Weaver Jack	1-52	32015403	140.76
M1366	"	2-52	"	140.76
M1367	Infra Red Lamp	2-52	32015402	217.87
M1368	"	"	32015402	217.87
M1369	¼" Holgun	"	"	47.61
M1370	Margvette Welding Outfit	"	"	113.33
M1372	Shepard Thompson Brake Machine	"	32015401	199.24
M1374	Pressteel Bench	3-52	32015411	60.03
M1375	Pressteel Bench	3-52	32015411	60.03
M1376	Bear H.D. Wheel	4-52	32015401	534.06
M1377	Hoist for 330 Wheel Balance	4-52	32015401	31.05
M1378	Hunter Wheel Balance	4-52	32015401	338.96
M1379	Lincoln Lub Unit	8-52	32015402	159.39
M1380	Lincoln Lub Unit	8-52	32015402	159.39
M1381	Appearance Servicer	8-52	32015411	64.77
M1382	Appearance Servicer	8-52	32015411	64.77
M1383	Appearance Servicer	8-52	32015411	64.77

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Asset Tag. No.	Description	Date Acqd.	Account	Gross Value
				\$
M1384	Appearance Servicer	8-52	32015411	64.77
M1385	Apperance Servicer	8-52	32015411	64.80
M1386	Smith Portable Torch & Cart	9-52	32015402	133.41
M1387	Blackhawk Porto Power	9-52	32015403	78.25
M1388	Johnsen Trans. Jack	9-52	32015403	101.95
M1389	Kleer Flo Cleanmaster	9-52	32015402	154.11
M1391	Graco Deluxe Merchandiser	9-52	32015411	377.26
M1392	Graco Deluxe Merchandiser	9-52	32015411	377.26
M1393	Allen Instrument	9-52	32015403	329.60
M1394	Blackhawk 4 ton Jack	9-52	32015403	140.76
M1395	Blackhawk 4 ton Jack	9-52	32015403	140.76
M1396	Blackhawk 4 ton Jack	9-52	32015403	140.76
M1397	Blackhawk 4 ton Jack	9-52	32015403	140.76
M1401	Monoxivent System	1-53	32015411	38.32
M1402	Monoxivent System	1-53	32015411	38.32
M1403	B & D Valve Shop	1-53	32015403	669.65
M1404	Master Motor Tester	1-53	32015403	543.38
M1405	Master Motor Tester	1-53	32015403	543.38
M1406	Master Motor Tester	1-53	32015403	543.37
M1407	Generator Tester	1-53	32015403	1,065.02
M1410	Sun Battery Charger	1-53	32015401	137.65
M1411	Sun Battery Charger	1-53	32015401	137.65
M1412	Sun Battery Charger	1-53	32015401	137.65
M1413	Berger Lockers	2-53	32015411	21.24
M1414	Berger Locker	2-53	32015411	21.24
M1415	Berger Locker	2-53	32015411	21.24
M1416	Berger Locker	2-53	32015411	21.24
M1418	Behr Super Frame & Alignment Ser.	2-53	32015401	3,244.68
M1419	Fostoria Heat Lamps	2-53	32015402	77.62
M1420	Fostoria Heat Lamp	2-53	32015402	77.62
M1421	Fostoria Heat Lamp	2-53	32015402	77.62
M1422	Fostoria Heat Lamp	2-53	32015402	77.64
M1423	Red Devil Pain Shaker	3-53	32015402	149.04
M1424	Kleer Flo Korb U Toter	4-53	32015402	47.82
M1425	Kleer Flo Korb U Toter	4-53	32015402	47.81
M1426	Globe Model Post Frame			
	Kontakt Hoist	4-53	32015403	931.54
M1427	Globe Model Post Frame			
	Kontakt Hoist	4-53	32015403	931.54
M1429	Kelite Gas Fired Steam Cleaner	5-53	32015402	810.92
M1430	Graco Service Merchandiser	5-53	32015411	377.26
M1431	Graco Serv. Merchandiser	5-53	32015411	377.26
M1432	Graco Serv. Merchandiser	5-53	32015411	377.26
M1433	Service Merchandiser, Graco	5-53	32015411	377.26
M1434	" " "	"	"	377.25
M1435	Speaker	"	"	82.25
M1436	"	"	"	82.25

Asset Tag. No.	Description	Date Acqd.	Account	Gross Value
				\$
M1437	"	5-53	32015411	82.27
M1438	Dwell Tact Tester	"	32015403	49.27
M1439	Wheel Balancer with Spinner	"	32015401	303.46
M1441	Vacuum Cleaner	"	32015402	197.64
M1442	Lathe, Van Norman	"	32015401	918.25
M1444	Jack, Mora Floor	"	32015403	128.42
M1446	" " "	"	"	128.42
M1445	" " "	"	"	128.42
M1447	Bean Visualiner	"	"	1,862.59
M1448	Turk Air Reels	"	32015402	72.07
M1449	" " "	"	"	72.07
M1450	" " "	"	"	72.08
M1451	" " "	"	"	72.08
M1452	" " "	"	"	72.08
M1453	" " "	"	"	72.08
M1454	" " "	"	"	72.07
M1455	" " "	"	"	72.07
M1456	" " "	"	"	64.07
M1457	Cabinets, Storage	"	32015411	97.81
M1458	" " "	"	"	97.81
M1459	" " "	"	"	97.81
M1460	Parts Bins	"	"	70.10
M1461	" " "	"	"	70.10
M1462	" " "	"	"	70.10
M1463	" " "	"	"	70.10
M1464	" " "	"	"	70.13
M1465	Post Hoist, Weaver Twin	4-53	32015403	876.13
M1466	" " " "	"	"	876.13
M1467	Kleer Flo Carbutator	6-53	32015402	47.82
M1468	" " "	"	"	47.82
M1469	" " "	"	"	47.82
M1470	" " "	"	"	47.81
M1471	Appearance Servicer	7-53	32015411	65.73
M1472	" " "	"	"	65.72
M1473	Ped Fan	"	"	100.21
M1474	" " "	"	"	100.21
M1475	Parts Bin	"	"	70.55
M1476	" " "	"	"	70.55
M1478	Kleer-Flo Cleanmasters	"	32015402	154.11
M1479	Cabinet, Storage	"	32015411	88.03
M1480	Lockers, Berger S.S.	8-53	"	20.74
M1481	" " "	"	"	20.74
M1482	" " "	"	"	20.74
M1483	" " "	"	"	20.74
M1484	" " "	"	"	20.74
M1485	" " "	"	"	20.75
M3800	Borroughs Tray Dividers	1-54	32015411	49.68

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Asset Tag. No.	Description	Date Acqd.	Account	Gross Value
				\$
M3801	Bench set-up	1-54	32015411	40.99
M3802		"	"	40.98
M3804	Shure Appearance Merch.	1-54	"	61.58
M3805	"	"	"	61.58
M3806	Shure Service Desk	"	"	89.68
M3807	Infr. Red Lamp	"	32015402	39.70
M3808	Kleer Flo Parts Cleaner	"	"	149.04
M3809	Hydraulic Jack	"	32015403	136.62
M3810	"	"	"	136.62
M3812	Welding Cart & Torch	"	32015402	147.13
M3813	Volt Amp Tester	"	32015403	65.21
M3814	Exhaust Fan	"	32015411	103.19
M3814A	Storage Cabinet	2-54	"	91.98
M3815	"	"	"	91.99
M3818	Spraying Paint Cabinet	6-54	"	92.63
M3819	Locker, Clothes	8-54	"	20.32
M3820	"	"	"	20.32
M3821	"	"	"	20.32
M3822	"	"	"	20.32
M3823	"	"	"	20.32
M3824	"	8-54	"	20.30
M3825	Jack, 4 Ton	"	32015403	130.68
M3826	Micro Wheel Balancer	1-55	32015401	176.28
M3827	Spray King Paint Cabinet	"	32015411	91.29
M3828	"	"	"	91.29
M3829	"	"	"	91.29
M3830	Dist. TST & Cab	4-55	32015403	487.76
M3831	Armature TST	"	"	65.52
M3832	SA18 Blackhawk Porto Power	"	32015401	97.84
M3833	Storage Cabinet	"	32015411	64.97
M3834	Clothes Locker	"	"	19.60
M3835	"	"	"	19.60
M3836	"	"	"	19.60
M3838	Floor Jack	3-55	32015403	162.24
M3839	"	"	"	162.24
M3840	"	"	"	162.24
M3841	Air Conditioning Unit	4-55	32015411	1,649.30
M3842	"	"	"	1,958.12
M3843	"	4-55	"	1,958.12
M3844	Air Conditioner	4-55	32015411	1958.12
M3845	" "	"	"	1958.12
M3846	" "	"	"	3006.21
M3847	" "	"	"	3006.21
M3848	" "	"	"	482.31
M3849	" "	"	"	482.31
M3850	" "	"	"	482.31
M3851	" "	"	"	482.31

Asset Tag. No.	Description	Date Acqd.	Account	Gross Value
				\$
M3852	" "	4-55	32015411	482.31
M3853	" "	"	"	482.31
M3854	" "	"	"	482.31
M3865	" "	"	"	482.31
M3856	" "	"	"	482.31
M3857	" "	"	"	482.31
M3858	" "	"	"	469.18
M3859	" "	"	"	475.51
M3860	" "	"	"	420.02
M3861	" "	"	"	420.02
M3862	" "	"	"	420.02
M3863	Hunter Ped. Fan	6-55	"	103.94
M3864	Cabinet	"	"	58.50
M3865	Kleen Master Cleaner	"	32015402	147.68
M3866	Steel Bench	"	32015411	70.90
M3867	" "	"	"	70.89
M3868	Battery Charger	5-55	32015401	126.99
M3869	Lift, Miller Bumper	"	32015403	153.40
M3870	Storage Cabinet	8-55	32015411	99.96
M3871	Lift, Atlas Bumper	11-55	32015403	153.40
M3872	Lift, Atlas Bumper	11-55	"	153.40
M3873	Cleaner, Steam	3-56	32015402	836.30
M3874	Transmission Jack	4-56	32015403	113.15
M3875	Cabinet Storage	5-56	32015401	105.07
M3876	Cabinet "	"	"	105.07
M3877	" "	"	"	93.32
M3879	Welder, Spot-Manuel	10-56	32015402	179.92
M3880	Kleer-Flo Carb-U-Tator Tank	4-57	"	43.80
M3881	" " "	"	"	43.80
M3882	Simpson Meter	"	32015403	89.76
M3883	Weaver Jack	"	"	160.44
M3884	" "	"	"	160.45
M3885	" "	"	"	160.45
M3886	Jack, Wudel Trans.	"	"	116.69
M3887	Jack	"	"	150.80
M3888	Fence, Wire	6-57	32015411	512.82
M3889	Porto Power, Blackhawk	10-57	"	268.51
M3890	Cabinet, Storage	"	"	93.76
M3891	Jack, Kansas	"	"	208.00
M3892	Recorder, Time	11-57	"	233.01
M3894	" "	"	"	233.00
M3895	" "	"	"	233.00
M3896	Recorder, Time	11-57	32015411	233.00
M3897	Tester, Master Distributor	1-58	32015403	811.20
M3898	Tank, Hot Water	2-58	32015411	340.00
M3899	Fan, Exhaust	2-58	"	52.72
M3900	"	"	"	52.72

Asset Tag. No.	Description	Date Acqd.	Account	Gross Value
				\$
M3901	"	2-58	32015411	52.72
M3902	"	"	"	52.72
M3903	"	"	"	52.72
M3904	"	2-58	"	52.72
M3905	"	"	"	52.72
M3906	"	"	"	44.67
M3907	Trolley, Rail & Electric	3-58	32015403	1,187.48
M3908	Globe Vent	4-58	32015411	110.00
M3909	"	"	"	110.00
M3910	Wheel Balancer	7-58	32015403	161.88
M3911	Floor Jack	"	"	138.38
M3912	Exhaust Fan w Wall Shutter	7-58	32015411	51.72
M3913	"	"	"	51.71
M3914	"	"	"	51.71
M3915	"	"	"	51.71
M3916	Illuminated Poster	12-58	"	225.00
M3917	Storage Cabinet	"	"	93.76
M3918	Battery Charger	"	32015401	86.27
M3919	Tube Checker	1-59	32015403	165.88
M3920	Sewing Machine Head	5-59	32015402	491.40
M3921	Charging Station	"	32015401	164.74
M3922	Platform Truck	5-59	32015403	81.77
M3922-A	"	"	"	81.76
M3923	Cleaning Tanks	6-59	32015411	185.64
M3924	"	"	"	185.64
M3925	"	"	"	185.64
M3926	Electric Tire Changer	11-59	32015401	359.89
M3927	Air Conditioner	"	32015411	252.17
M3928	Jack	12-59	32015403	208.08
M3929	Water Cooler	10-59	32015411	374.00
M3930	Water Cooler	2-60	"	184.25
M3931	Milkerometer	"	32015403	137.80
M3932	Fan	"	32015411	120.52
M3933	Welding & Cutting Torch	3-60	32015402	152.70
M3934	Jack	7-60	32015403	190.37
M3935	Air Tank	2-61	32015420	554.00
M3936	Jack	7-61	32015403	96.75
M3937	Washer, Parts, Kleeer Flo	"	32015402	211.71
M3938	Cabinet, Paint	9-61	32015411	100.88
M3939	Shelving, Clip	11-61	"	187.20
M3940	System, Communication	12-61	"	2,088.00
M3941	Hoist, Frame Contact	3-62	"	719.74
M3942	Cleaner, Parts, Kleeer Flo	9-62	32015402	246.19
M3943	Dozer, Damage	"	32015403	1,121.12
M3944	Recorder, Time	3-63	32015411	229.85
M3945	Tester, Quick Service	10-63	"	1,029.60
M1	Spray Booth	1-49	32015402	2,729.50

Asset Tag. No.	Description	Date Acqd.	Account	Gross Value
				\$
M4	Steel Bench	1-49	32015411	27.93
M5	Steel Bench	1-49	32015411	27.93
M7	Heat Lamp	1-49	32015402	74.16
M8	Heat Lamp	1-49	32015402	74.16
M14	Pipe Rack	1-49	32015411	15.45
M15	Pipe Rack	1-49	32015411	15.45
M25	Painted Pine Benches	1-49	32015411	14.42
M26	Metal Clad Top Benches	1-49	32015411	14.42
M27	Metal Clad Top Benches	1-49	32015411	14.42
M28	Metal Clad Top Benches	1-49	32015411	14.42
M34	Locker Room	1-49	32015411	56.65
M54	Steel Finish Bench	1-49	32015411	24.72
M56	Pine Cases	1-49	32015411	5.15
M62	Pine Finish Case	1-49	32015411	43.78
M65	Pine Case	1-49	32015411	5.15
M66	Pine Case	1-49	32015411	5.15
M68	Steel Bench	1-49	32015411	30.90
M70	Acetylene Wlder	1-49	32015402	61.80
M72	Acetylene Welder	1-49	32015402	51.50
M74	Arc Welder	1-49	32015402	129.78
M77	Platform Scale	1-49	32015411	36.05
M78 & 81	Crane System	1-49	32015403	144.20
M79 & 80	Crane System	1-49	32015403	125.66
M84	Sewing Machine Table	1-49	32015402	83.95
M85	Pine Bench	1-49	32015411	35.02
M87	Pine Bench	1-49	32015411	51.50
M91	Pine Cabinet	1-49	32015411	5.15
M101	Pine Rack	1-49	32015411	12.36
M104	Pine Case	1-49	32015411	5.15
M105	Steel Bin	1-49	32015411	41.20
M108	Wire Stock Room Enc.	1-49	32015411	169.95
M118	Fender Rack	1-49	32015411	18.03
M128	Ped. Grinder Magnetic Starter	1-49	32015401	20.60
M129 & 130	Crane System	1-49	32015403	125.66
M131 & 132	Crane System	1-49	32015403	125.66
M1480	1 Ton Hoist	8-53	32015403	496.80
M1488	Black & Decker H.D. Bench Grinder	10-53	32015401	61.58
M2863	Sun Dwell Tact Tester	9-52	32015403	70.38
M3503	Marquitt Battery Charger	12-53	32015401	289.28
LA1	Harley Davidson 60G2210	1-60		1,687.70
LA2	Harley Davidson 60G2143	12-59		1,688.70
LA3	Harley Davidson 59G1737	10-59		1,719.18
LA4	Chevrolet 3E59L119216	7-59		2,237.38
LA5	Chevrolet 2C254L114620	3-62		2,146.23
LA6	Chevy II 202110140353	5-62		1,963.10
LA7	Chevrolet 305270119540	6-63		1,752.64
LA8	Chevrolet 305270119504	6-63		1,752.64
				<u>157,852.44</u>

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Asset Tag. No.	Description	Date Acqd.	Account	Gross Value
				\$
F2	Chair	1-49	32016901	9.27
F3	Steel Cabinet Desk	1-49	"	21.63
F7	Table	1-49	"	7.21
F8	Desk	1-49	"	7.73
F9	Chair	1-49	"	5.15
F13	Table	1-49	"	12.36
F14	Chair	1-49	"	4.12
F15	Chair	1-49	"	4.12
F16	Chair	1-49	"	4.12
F17	Chair	1-49	"	4.12
F18	Chair	1-49	"	4.12
F19	Clock	1-49	32016902	8.24
F20	Time Recorder	1-49	"	25.75
F28	Table	1-49	32016901	6.18
F32	Table	1-49	"	10.30
F36	Chair	1-49	"	20.60
F37	Chair	1-49	"	25.75
F38	Settee	1-49	"	25.75
F39	Table	1-49	"	25.75
F43	Chair	1-49	"	10.30
F44	Chair	1-49	"	10.30
F45	Table	1-49	"	10.30
F46	Table	1-49	"	10.30
F47	Couch	1-49	"	61.80
F48	Chair	1-49	"	25.75
F49	Chair	1-49	"	25.75
F50	Settee	1-49	"	61.80
F51	Chair	1-49	"	36.05
F52	Ottoman	1-49	"	20.60
F53	Table	1-49	"	15.45
F54	Table	1-49	"	15.45
F56	Table	1-49	"	7.73
F59	Table	1-49	"	52.53
F61	Chair	1-49	"	6.18
F62	Chair	1-49	"	6.18
F63	Chair	1-49	"	6.18
F64	Chair	1-49	"	6.18
F65	Chair	1-49	"	6.18
F66	Chair	1-49	"	6.18
F67	Chair	1-49	"	6.18
F68	Chair	1-49	"	6.18
F70	Stool	1-49	"	15.45
F71	Stool	1-49	"	15.45
F72	Stool	1-49	"	15.45
F73	Stool	1-49	"	15.45
F133	Table	1-49	"	15.45
F137	Steel File	1-49	"	15.45

Asset Tag. No.	Description	Date Acqd.	Account	Gross Value
				\$
F139	Table	1-49	32016901	10.30
F140	Table	1-49	"	10.30
F826	Calculator	3-49	32016902	776.21
F827	Comptometer	4-49	"	667.44
M829	Adding Machine, Underwood	3-49	"	353.49
F830	"	"	"	353.49
F838	Protectograph	"	"	300.25
F839	Job Time Recorder	"	"	161.27
F840	"	"	"	161.28
F842	Register	"	"	37.76
F843	"	"	"	37.76
F844	"	"	"	46.09
F846	Chair, Posture	4-49	32016901	25.24
F847	Table	"	"	33.47
F848	File, 4-Dr.	"	"	70.35
F849	"	"	"	70.35
F850	Desk	"	"	92.70
F851	"	"	"	92.70
F852	"	"	"	79.24
F853	Chair, Swivel	"	"	75.19
F854	"	"	"	75.19
F855	Chair, Arm	"	"	61.80
F856	"	"	"	61.80
F857	"	"	"	61.80
F858	"	"	"	61.80
F859	Costumer	"	"	7.73
F860	Typewriter Desk	"	"	143.50
F861	"	"	"	143.50
F862	"	"	"	143.50
F863	"	"	"	143.50
F864	"	"	"	143.50
F865	"	"	"	143.50
F866	"	"	"	143.50
F867	"	"	"	143.50
F868	"	"	"	143.50
F869	"	"	"	143.50
F870	"	"	"	143.50
F871	"	"	"	143.50
F872	"	"	"	143.50
F873	"	"	"	143.50
F874	"	5-49	"	143.50
F875	Desk	4-49	"	112.75
F876	"	"	"	112.75
F877	"	"	"	112.75
F878	"	"	"	112.75
F879	"	"	"	112.75
F880	"	"	"	112.75

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Asset Tag. No.	Description	Date Acqd.	Account	Gross Value
				\$
F881	"	4-49	32016901	112.75
F882	"	"	"	112.75
F883	"	"	"	112.75
F884	"	"	"	112.75
F885	"	"	"	112.75
F1129	Steelcase Side Chair	9-52	32016901	21.89
F1130	Steelcase Side Chair	9-52	32016901	21.89
F1131	Steelcase Side Chair	9-52	32016901	21.89
F1132	Steelcase Side Chair	9-52	32016901	21.89
F1133	Steelcase Side Chair	9-52	32016901	21.89
F1134	Steelcase Side Chair	9-52	32016901	21.89
F1135	Steelcase Side Chair	9-52	32016901	21.89
F1136	Steelcase Side Chair	9-52	32016901	21.89
F1137	Steelcase Side Chair	9-52	32016901	21.89
F1138	Steelcase Side Chair	9-52	32016901	21.89
F1139	Steelcase Side Chair	9-52	32016901	21.84
F1140	Service Appearance	10-52	32016901	63.14
F1141	Service Appearance	10-52	32016901	63.14
F1142	Service Appearance	10-52	32016901	63.13
F1143	Shop Desk	10-52	32016901	38.29
F1144	Shop Desk	10-52	32016901	38.30
F1145	Hinged Door for Flexibilt Unit	11-52	32016901	29.35
F1146	National Posting Tray-Stand & Rod	11-52	32016901	77.16
F1147	National Posting Tray-Stand & Rod	11-52	32016901	77.16
F1148	National Posting Tray-Stand & Rod	11-52	32016901	77.15
F1149	Frigidaire Water Cooler	12-52	32016902	190.00
F1150	Frigidaire Water Cooler	12-52	32016902	189.99
F1151	Steelcase 4 Dr. Letter File	12-52	32016901	99.81
F1152	Steelcase Desk	12-52	32016901	116.22
F1153	Steelcase Side Chair	12-52	32016901	28.68
F1154	Steelcase Side Chair	12-52	32016901	28.67
F1155	Steelcase Desk	12-52	32016901	122.37
F1156	Steelcase Side Chair	12-52	32016901	28.66
F1157	Steelcase Side Chair	12-52	32016901	28.66
F1158	Service Mgr. Desk	11-52	32016901	175.47
F1159	Globe Wernicks Steel Table	1-53	32016901	70.64
F1160	Globe Wernicke Cabinet	1-53	32016901	123.89
F1161	Globe Wernicke Cabinet	1-53	32016901	123.89
F1162	Royal Elite	1-53	32016902	179.52
F1163	Royal Elite	1-53	32016902	179.52
F1165	Royal Elite	1-53	32016902	402.64
F1166	Globe Visible Cabinets	2-53	32016901	123.89
F1167	Globe Visible Cabinets	2-53	32016901	123.89
F1168	Globe Visible Cabinets	2-53	32016901	123.89
F1170	Globe Horizontal Unit	3-53	32016901	58.51
F1171	Globe Horizontal Unit	3-53	32016901	58.51
F1172	Globe Horizontal Unit	3-53	32016901	58.51

Asset Tag. No.	Description	Date Acqd.	Account	Gross Value
				\$
F1173	Globe Horizontal Unit	3-53	32016901	10.54
F1174	Steelcase Typewriter Right Ped.	3-53	32016901	181.44
F1175	Steelcase Typewriter Desk Left Ped	3-53	32016901	181.44
F1176	Steelcase Calculating Machine Desk	3-53	32016901	150.16
F1177	Steelcase Posture Chairs	3-53	32016901	30.20
F1178	Steelcase Posture Chairs	3-53	32016901	30.20
F1179	Steelcase Posture Chairs	3-53	32016901	30.20
F1180	Steelcase Posture Chairs	3-53	32016901	30.21
F1070	Sofa	3-51	32016901	303.85
F1071	Sofa	3-51	"	303.85
F1072	Table	3-51	"	66.95
F1073	Cocktail Table	3-51	"	97.85
F1075	Chair	4-51	"	29.87
F1077	Chair	4-51	"	29.87
F1078	Chair	4-51	"	29.87
F1079	Typewriter Stand	4-51	"	22.15
F1080	Cabinet	4-51	"	123.89
F1081	Cabinet	4-51	"	123.89
F1082	Cabinet	4-51	"	123.89
F1084	Typewriter	5-51	32016902	172.30
F1085	Cabinet	6-51	32016901	17.47
F1086	Cabinet	6-51	"	17.47
F1087	Cabinet	6-51	"	17.47
F1088	Cabinet	6-51	"	17.47
F1089	Cabinet	6-51	"	17.47
F1090	Cabinet	6-51	"	17.47
F1091	Cabinet	6-51	"	123.89
F1092	Cabinet	6-51	"	123.89
F1093	Dictating Machine & Case	7-51	32016902	407.17
F1094	Transcribing Machine	7-51	"	373.02
F1097	Water Cooler	10-51	"	215.53
F1098	Elliott Fisher Machine	11-51	"	4,201.34
F1099	Posting Tray Hood	1-52	32016901	77.42
F1100	Chairs	1-52	"	30.21
F1101	Chairs	1-52	"	30.20
F1103	Chairs	1-52	"	30.20
F1104	Desk	2-52	"	138.77
F1105	Desk	2-52	"	122.35
F1106	Chair	2-52	"	30.20
F1107	Chair	2-52	"	30.20
F1108	Chair	2-52	"	64.79
F1109	X-Ray File	2-52	"	146.04
F1112	Heater	2-52	"	137.28
F1113	Letter File	3-52	"	99.80
F1114	Letter File	3-52	"	99.81
F1115	Letter File	3-52	"	99.81
F1116	Letter File	3-52	"	99.80

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Asset Tag. No.	Description	Date Acqd.	Account	Gross Value
				\$
F1117	Letter File	3-52	32016901	99.81
F1118	Letter File	3-52	"	99.81
F1119	Desk	3-52	"	172.47
F1121	Adding Machine	5-52	32016902	162.99
F1122	Typewriter Desk	7-52	32016901	181.44
F1123	Cabinet	7-52	"	777.60
F1124	Typewriter Desk	9-52	"	172.26
F1125	Desk	9-52	"	138.77
F1126	Chair	9-52	"	30.21
F1127	Chair	9-52	"	30.21
F1128	Chair	9-52	"	21.89
F940	Rec. Desk	8-49	32016901	98.19
F941	Rec. Desk	"	"	98.19
F956	Venetian Blinds	10-49	"	1101.33
F957	Desk	"	"	103.00
F958	Desk	"	"	103.00
F959	Desk	"	"	103.00
F960	Desk	"	"	103.00
F961	Desk	"	"	103.00
F962	Desk	"	"	103.00
F963	Desk	"	"	103.00
F964	Desk	"	"	103.00
F965	Chair	"	"	23.69
F966	Chair	"	"	23.69
F967	Chair	"	"	23.69
F968	Chair	"	"	23.69
F969	Chair	"	"	23.69
F970	Chair	"	"	23.69
F971	Chair	"	"	23.69
F972	Chair	"	"	23.69
F973	Chair	"	"	23.69
F974	Chair	"	"	23.69
F975	Chair	"	"	23.69
F976	Chair	"	"	23.69
F978	Chair	"	"	23.95
F979	Chair	"	"	40.69
F980	Office Valet	"	"	69.53
F981	Carpet & Metal Striping	"	"	1,201.28
F983	Draperies	"	"	315.68
F984	Letter File	11-49	"	66.44
F985	Letter File	"	"	66.44
F986	Letter File	"	"	66.44
F987	Letter File	"	"	66.44
F988	Letter File	"	"	66.44
F989	Letter File	"	"	66.44
F990	Letter File	"	"	66.43
F991	Letter File	"	"	66.43

Asset Tag. No.	Description	Date Acqd.	Account	Gross Value
				\$
F992	Letter File	11-49	32016901	66.43
F993	Letter File	"	"	66.43
F994	Letter File	"	"	66.43
F995	Letter File	"	"	66.43
F996	Cash Register	"	32016902	978.08
F997	Cash Register	"	"	978.07
F998	Venetian Blinds	"	32016901	71.54
F1000	Desk Pedestal	12-49	"	103.00
F1001	Desk Pedestal	"	"	103.00
F1002	Desk	"	"	103.00
F1003	Desk	"	"	103.00
F1004	Side Chair	"	"	23.69
F1005	Side Chair	"	"	23.69
F1006	Side Chair	"	"	23.69
F1007	Side Chair	12-49	32016901	23.69
F1008	Underwood Sundstrand Adding	1-50	32016902	327.89
F1009	Machine	1-50	"	327.89
F1011	Gray Globe Visible Cabinet	3-50	32016901	109.60
F1012	"	3-50	"	109.61
F1013	"	3-50	"	109.61
F1014	"	3-50	"	109.61
F1015	"	3-50	"	109.61
F1016	"	3-50	"	109.60
F1017	"	"	"	109.60
F1018	"	"	"	109.60
F1019	Steel table, gray	"	"	56.36
F1020	"	"	"	56.36
F1021	Perforator	4-50	32016902	236.25
F1022	Arm Rotary Chair	5-50	32016901	55.83
F1023	Posting Tray	5-50	"	58.87
F1024	Posting Tray	5-50	"	58.87
F1025	Posting Tray	5-50	"	58.87
F1026	Posting Tray	5-50	"	58.87
F1027	Posting Tray	5-50	"	58.87
F1928	"	5-50	"	58.87
F1029	Sundstrand Adding Machine	6-50	32016902	322.92
F1030	Posting Tray	11-50	32016901	59.74
F1031	"	11-50	"	59.74
F1032	"	"	"	60.03
F1033	Sign	"	"	1,183.78
F1035	Steelcase Salesman's Desk	"	"	55.59
F1038	3 Coast Venetians	"	"	26.45
F1039	Typewriter Desk	"	"	151.15
F1040	"	"	"	151.15
F1041	Posture Chair	"	"	25.49
F1042	"	"	"	25.50
F1047	Sundstrand Adding Machine	"	32016902	322.92

Asset Tag. No.	Description	Date Acqd.	Account	Gross Value
				\$
F1048	Gray Globe Visible Cabinet	11-50	32016901	117.82
F1049	"	"	"	117.83
F1050	Burroughs Billing Machine	"	32016902	2,245.62
F1051	Sundstrand Adding Machine	"	"	322.92
F1052	Royal Typewriter	12-50	"	157.76
F1053	Steel Table	12-50	32016901	60.58
F1054	Gray Globe Cabinet	"	"	117.82
F1055	"	"	"	117.83
F1057	Arm Rotary Chair	"	"	55.82
F1059	Posture Chair	"	"	26.05
F1060	"	"	"	26.04
F1063	Royal Typewriter	1-51	32016902	157.76
F1064	Posting Tray	"	32016901	66.03
F1065	"	"	"	66.03
F1066	"	1-51	"	66.04
F1067	Desk (Gray)	"	"	130.88
F1069	Burroughs Chair	2-52	"	54.61
F886	Desk	1-49	32016901	135.56
F887	"	"	"	141.45
F888	"	"	"	141.45
F889	Chairs, Arm Rotary	"	"	54.84
F890	"	"	"	54.84
F891	"	"	"	54.84
F892	"	"	"	54.84
F893	"	"	"	54.84
F894	"	"	"	54.84
F895	"	"	"	54.84
F896	"	"	"	54.84
F897	"	"	"	54.84
F898	Table	"	"	79.95
F899	"	"	"	79.95
F900	"	"	"	79.95
F901	"	"	"	79.95
F902	Chair, Arm	"	"	34.34
F903	"	"	"	34.34
F905	"	"	"	34.33
F906	"	"	"	34.33
F907	Double Drawer	"	"	148.63
F908	Four Drawer File	"	"	82.00
F909	"	"	"	82.00
F910	Letter File	"	"	82.00
F911	Four Drawer File	"	"	71.24
F912	"	"	"	71.24
F913	"	"	"	71.24
F914	"	"	"	71.24
F915	"	"	"	71.24
F916	"	"	"	71.24

Asset Tag. No.	Description	Date Acqd.	Account	Gross Value
				\$
F917	Letter File	1-49	32016901	71.24
F918	Letter File	"	"	82.00
F919	"	"	"	71.22
F920	"	"	"	71.24
F921	"	"	"	71.24
F922	"	"	"	71.24
F923	"	"	"	71.24
F924	"	"	"	71.24
F925	Cashgard Chest Encased	"	"	401.19
F926	Underwood Adding Machine	"	32016902	326.30
F928	Water Cooler	"	"	294.30
F929	Comptometer	"	"	80.00
F930	Calculating Machine Desk	5-1-49	32016901	142.48
F932	Victor Adding Machine	"	32016902	154.65
F934	Bookkeeping Machine	8-1-49	"	3,739.96
F935	Reception Desk	"	32016901	98.18
F936	"	"	"	98.19
F937	"	"	"	98.19
F938	"	"	"	98.19
F939	"	"	"	98.19
F1287	Burroughs-Bin-Cascade	10-53	32016901	77.52
F1288	"	10-53	"	77.52
F1289	"	"	"	77.52
F1290	"	"	"	77.52
F1291	"	"	"	77.52
F1292	"	"	"	77.52
F1293	"	"	"	77.52
F1294	"	"	"	77.52
F1295	"	"	"	77.52
F1296	"	"	"	77.52
F1297	"	"	"	77.52
F1298	"	"	"	77.52
F1299	"	"	"	77.52
F1300	"	"	"	77.52
F1301	"	"	"	77.52
F1302	"	"	"	77.52
F1303	"	"	"	77.52
F1304	"	"	"	77.52
F1305	"	"	"	77.52
F1306	"	"	"	77.52
F1307	"	"	"	77.23
F1308	Water Cooler	"	32016902	189.89
F1309	"	"	"	189.89
F1310	"	"	"	189.89
F1311	Victor Adding Machine	"	"	334.36
F1330	Posture Chair	12-53	32016901	27.36
F1331	Posture Chair	"	"	27.36

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Asset Tag. No.	Description	Date Acqd.	Account	Gross Value
				\$
F1332	Bookkeeping Machine	12-53	32016902	4,222.80
F632	Metal File	1-49	32016901	41.20
F633	Metal File	"	"	10.30
F634	"	1-49	"	41.20
F635	"	1-49	"	49.44
F636	"	1-49	"	51.50
F637	Steel Age File	1-49	"	46.35
F638	Metal File	1-49	"	49.44
F651	Adding Machine	"	32016902	154.50
F655	Truck Ledger	"	32016901	15.45
F677	Desk Lamp	"	"	7.73
F679	"	"	"	7.73
F681	"	"	"	7.73
F713	India Pamir Rug	"	"	1030.00
F718	Salesman Desk	"	"	15.45
F720	Desk	"	"	15.45
F735	Side Chair	3-49	"	17.42
F736	Side Chair	"	"	17.42
F737	Side Chair	"	"	17.42
F738	Side Chair	"	"	17.42
F739	Side Chair	"	"	17.42
F740	"	"	"	17.42
F741	"	"	"	17.42
F742	"	"	"	17.42
F743	"	"	"	17.42
F744	"	"	"	17.42
F745	"	"	"	17.42
F746	"	"	"	17.42
F747	"	"	"	17.43
F748	"	"	"	17.43
F749	"	"	"	17.43
F750	"	"	"	17.43
F751	"	"	"	17.43
F752	"	"	"	17.43
F753	"	"	"	17.43
F754	"	"	"	17.43
F755	"	"	"	17.43
F756	"	"	"	17.43
F757	"	"	"	17.43
F758	"	"	"	17.43
F759	"	"	"	17.43
F760	Hadley Ledger Tray	2-49	"	9.77
F761	"	"	"	9.79
F762	"	"	"	9.79
F763	"	"	"	9.79
F765	Elliot Fisher Machine	"	32016902	2637.49
F766	Chair	3-49	32016901	23.50

Asset Tag. No.	Description	Date Acqd.	Account	Gross Value
			\$	
F767	"	3-49	32016901	23.58
F768	"	"	"	23.58
F769	"	"	"	23.58
F770	"	"	"	23.58
F771	"	"	"	23.58
F772	"	"	"	23.58
F773	Chair	3-49	32016901	23.58
F774	Chair	"	"	23.58
F775	Chair	"	"	23.58
F776	Chair	"	"	23.58
F777	Chair	"	"	23.58
F778	Chair	"	"	23.58
F779	Chair	"	"	23.58
F780	Chair	"	"	23.58
F781	Chair	"	"	23.58
F782	Desk	"	"	102.50
F783	Desk	"	"	102.50
F784	Desk	"	"	102.50
F785	Desk	"	"	102.50
F786	Desk	"	"	102.50
F787	Desk	4-49	"	102.50
F788	Curved Desk	3-49	"	394.63
F789	Curved Table	3-49	"	287.00
F790	Telephone Cabinet	"	"	103.53
F792	Club Chair	"	"	186.55
F793	Club Chair	"	"	186.55
F794	Arm Rotary Chair	"	"	133.25
F795	Arm Chair	"	"	117.88
F796	Arm Chair	"	"	117.87
F797	Arm Chair	"	"	117.87
F798	Arm Chair	"	"	117.87
F799	Posture Chair	"	"	23.83
F800	Posture Chair	"	"	23.83
F801	Posture Chair	"	"	23.83
F802	Posture Chair	"	"	23.83
F803	Posture Chair	"	"	23.83
F804	Posture Chair	"	"	23.83
F805	Posture Chair	4-49	"	23.83
F806	Posture Chair	"	"	23.83
F807	Posture Chair	"	"	23.83
F808	Posture Chair	"	"	23.83
F809	Posture Chair	"	"	23.83
F810	Posture Chair	"	"	23.83
F811	Posture Chair	"	"	23.83
F812	Posture Chair	"	"	23.83
F813	Posture Chair	"	"	23.83
F814	Posture Chair	"	"	23.83

Asset Tag. No.	Description	Date Acqd.	Account	Gross Value
				\$
F815	Posture Chair	4-49	32016901	23.83
F816	Posture Chair	"	"	23.83
F817	Posture Chair	"	"	23.83
F818	Posture Chair	"	"	23.83
F819	Posture Chair	"	"	23.83
F821	Posture Chair	"	"	23.83
F822	Calculator	3-49	32016902	776.20
F823	Calculator	"	"	776.21
F825	Comptometer	4-49	"	667.44
F144	Metal File	1-49	32016901	5.15
F145	Walnut Chair	1-49	32016901	20.60
F149	Oak Chair	1-49	"	7.73
F153	Oak Chair	1-49	"	12.36
F156	Oak Chair	1-49	"	18.54
F157	Oak Chair	1-49	"	10.54
F160	Oak Chair	1-49	"	30.90
F161	Oak Chair	1-49	"	30.90
F162	Oak Chair	1-49	"	30.90
F165	Lin. Pt. Partition	1-49	"	4,886.32
F166	Wall Clock	1-49	32016902	25.75
F169	Time Recorder	1-49	"	36.05
F175	Counter	1-49	32016901	5.15
F180	Wall Clock	1-49	32016902	10.30
F187	Desk	1-49	32016901	92.70
F188	Desk	1-49	"	72.10
F192	Mahogany Table	1-49	"	15.45
F194	Inventory Cases	1-49	"	23.18
F195	Oak Desk	1-49	"	41.20
F196	Oak Desk	1-49	"	41.20
F197	Walnut Desk	1-49	"	41.20
F198	Walnut Desk	1-49	"	41.20
F199	Oak Table	1-49	"	20.60
F200	Oak Chair	1-49	"	8.24
F204	Oak Chair	1-49	"	30.90
F209	Posture Metal Chair	1-49	"	15.15
F229	Desk Lamp	1-49	32016902	7.73
F233	Metal File	1-49	32016901	41.20
F234	Metal File	1-49	"	41.20
F235	Metal File	1-49	"	41.20
F236	Metal File	1-49	"	41.20
F237	Transfer Case	1-49	"	7.73
F238	Transfer Case	1-49	"	7.73
F240	Transfer File	1-49	"	6.18
F241	Transfer File	1-49	"	6.18
F245	Transfer File	1-49	"	6.18
F247	File	1-49	"	12.36
F255	Oak Table	1-49	"	20.60

Asset Tag. No.	Description	Date Acqd.	Account	Gross Value
				\$
F257	Walnut Chair	1-49	32016901	18.03
F258	Walnut Chair	1-49	"	18.03
F260	Oak Desk	1-49	"	61.80
F261	Steel File	1-49	"	20.60
F264	Desk Lamp	1-49	"	7.73
F269	Oak Table	1-49	"	10.30
F273	Walnut Chair	1-49	"	6.18
F275	Clock	1-49	32016902	20.60
F277	Clock (Watchman's)	1-49	"	61.80
F280	Oak Table	1-49	32016901	5.15
F284	Chrome Table	1-49	"	41.20
F286	Wall Clock	1-49	32016902	25.75
F288	Maple Cabinet	1-49	32016901	20.60
F291	Oak Chair	1-49	32016901	20.60
F292	Oak Chair	1-49	32016901	20.60
F293	Leather Settee	1-49	32016901	46.35
F295	Metal File	1-49	32016901	41.20
F296	Cabinet	1-49	32016901	12.88
F300	Oak Table	1-49	32016901	20.60
F301	Revolving Oak Chair	1-49	32016901	15.45
F302	Oak Arm Chair	1-49	32016901	10.30
F303	Metal Table	1-49	32016901	12.88
F304	File Card Address	1-49	32016901	41.20
F305	File Card Address	1-49	32016901	41.20
F308	Oak Table	1-49	32016901	7.73
F309	Oak File	1-49	32016901	5.15
F310	Oak File	1-49	32016901	5.15
F311	Oak File	1-49	32016901	5.15
F312	Oak File	1-49	32016901	5.15
F316	Oak Desk	1-49	32016901	46.35
F317	Oak Files-Legal	1-49	32016901	5.15
F321	Posture Metal Chair	1-49	32016901	20.60
F322	Posture Metal Chair	1-49	32016901	20.60
F330	Masonite Top Desk	1-49	32016901	15.45
F331	Masonite Top Desk	1-49	32016901	15.45
F332	Metal File	1-49	32016901	20.60
F340	Posture Metal Chair	1-49	32016901	10.30
F341	Posture Metal Chair	1-49	32016901	20.60
F342	Posture Metal Chair	1-49	32016901	20.60
F344	Posture Chair	1-49	32016901	10.30
F345	Steel Settee	1-49	32016901	41.20
F346	Steel Chair	1-49	32016901	15.45
F347	Steele Tube Chair	1-49	32016901	12.88
F348	Steele Tube Chair	1-49	32016901	12.88
F350	Water Coller	1-49	32016901	36.05

Asset Tag. No.	Description	Date Acqd.	Account	Gross Value
				\$
F352	Time Recorder	1-49	32016901	97.85
F356	Walnut Desk	1-49	32016901	128.75
F357	Walnut Table	1-49	32016901	30.90
F358	Walnut Commode	1-49	32016901	30.90
F360	Metal File	1-49	32016901	41.20
F361	Revolving Arm Chair	1-49	32016901	56.65
F363	Walnut Arm Chair	1-49	32016901	25.75
F364	Walnut Arm Chair	1-49	32016901	25.75
F365	Walnut Arm Chair	1-49	32016901	25.75
F367	Bronze Ash Receiver	1-49	32016901	5.15
F368	Walnut Costumer	1-49	32016901	8.24
F373	Glass Top Type Desk	1-49	32016901	87.55
F374	Metal Cabinet	1-49	32016901	77.25
F376	Adding Machine	1-49	32016902	231.75
F378	Check Protector	1-49	32016902	77.25
F380	Walnut Posture Chair	1-49	32016901	20.60
F381	Walnut Posture Chair	1-49	32016901	20.60
F387	Bronze Ash Receiver	1-49	32016901	5.15
F390	Chair, Arm	1-49	32016901	5.15
F393	Chair, Arm	1-49	32016901	10.30
F397	Costumer	1-49	32016901	7.73
F401	Chair	1-49	32016901	10.30
F405	Table	1-49	32016901	10.30
F410	File, Metal	1-49	32016901	41.20
F411	File, Metal	1-49	32016901	41.20
F415	Chair, Arm	1-49	32016901	12.88
F421	Desk	1-49	32016901	36.05
F422	Chair	1-49	32016901	5.15
F423	Chair, Arm	1-49	32016901	10.30
F435	Chair, Arm	1-49	32016901	12.88
F438	Settee	1-49	32016901	20.60
F441	Table	1-49	32016901	5.15
F444	Costumer	1-49	32016901	10.30
F445	Chair, Arm	1-49	32016901	25.75
F446	Chair, Arm	1-49	32016901	25.75
F451	File, Metal	1-49	32016901	41.20
F460	Ash Receiver	1-49	32016901	10.30
F461	Ash Receiver	1-49	32016901	10.30
F465	Chair, Arm	1-49	32016901	15.45
F469	Chair, Arm	1-49	32016901	15.45
F470	Chair, Arm	1-49	32016901	15.45
F471	Chair, Arm	1-49	32016901	15.45
F472	Chair, Arm	1-49	32016901	15.45
F484	Water Cooler	1-49	32016902	256.47
F489	Display Case	1-49	32016901	51.50
F500	File, Metal	1-49	32016901	41.20
F506	File	1-49	32016901	25.75

Asset Tag. No.	Description	Date Acqd.	Account	Gross Value
				\$
F508	File	1-49	32016901	51.50
F509	File	1-49	32016901	25.75
F510	Fine, Sectional	1-49	32016901	10.82
F511	Fine, Sectional	1-49	32016901	10.82
F512	Fine, Sectional	1-49	32016901	10.82
F526	Desk	1-49	32016901	72.10
F530	File, Metal	1-49	32016901	30.90
F534	Lamp, Desk	1-49	32016901	7.73
F536	Lamp, Desk	1-49	32016901	7.73
F557	Stool, Metal	1-49	32016901	5.15
F558	Chair, Revolving	1-49	32016901	15.45
F565	Desk	1-49	32016901	51.50
F603	Clock, Electric	1-49	32016902	25.75
F614	Clock, Electric	1-49	32016902	15.45
F619	Partition, Glass	1-49	32016901	360.50
F621	Clock	1-49	32016902	25.75
F627	Scale, Postal	1-49	32016902	25.75
F628	Cabinet, Steel	1-49	32016901	36.05
F629	Safe	1-49	32016901	103.00
F630	Safe	1-49	32016901	154.50
F631	Safe	1-49	32016901	154.50
F1181	Steelcase Posture Chair	3-53	32016901	30.21
F1182	Left Sofa	"	"	303.85
F1183	Right Sofa	"	"	303.85
F1184	Corner Table	"	"	66.95
F1185	Large Cocktail Table	"	"	97.85
F1186	Berger Steel Locker	"	"	20.81
F1187	"	"	"	20.81
F1188	"	"	"	20.81
F1189	"	"	"	20.81
F1190	"	"	"	20.82
F1191	"	"	"	20.81
F1192	Burroughs Duplex Calculator	"	32016902	808.79
F1194	Calculating Machine Desk	4-53	32016901	150.14
F1198	Steelcase Desk	6-53	"	122.35
F1199	Typewriter Desk (Lft Ped)	"	"	181.44
F1200	Typewriter Desk (Lft Ped)	"	"	181.44
F1201	Steelcase Flat Top Desk	"	"	148.40
F1204	Cole Stationery Cabinet	"	"	47.51
F1205	"	"	"	47.50
F1206	IBM Electric Typewriter	8-53	32016902	444.33
F1207	Stationery Cabinet	"	32016901	47.51
F1208	Burroughs Bin-Cascade	10-53	"	77.52
F1209	"	"	"	77.52
F1210	"	"	"	77.52
F1211	"	"	"	77.52
F1212	"	"	"	77.52

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Asset Tag. No.	Description	Date Acqd.	Account	Gross Value
F1213	"	10-53	32016901	\$ 77.52
F1214	"	"	"	77.52
F1215	"	"	"	77.52
F1216	"	"	"	77.52
F1217	"	"	"	77.52
F1218	"	"	"	77.52
F1219	"	"	"	77.52
F1220	"	"	"	77.52
F1221	"	"	"	77.52
F1222	"	"	"	77.52
F1223	"	"	"	77.52
F1224	"	"	"	77.52
F1225	"	"	"	77.52
F1226	"	"	"	77.52
F1227	"	"	"	77.52
F1228	"	"	"	77.52
F1229	"	"	"	77.52
F1230	"	"	"	77.52
F1231	"	"	"	77.52
F1232	"	"	"	77.52
F1233	"	"	"	77.52
F1234	"	"	"	77.52
F1235	"	"	"	77.52
F1236	"	"	"	77.52
F1237	Burrough Bin-Cascade	10-53	3201601	77.52
F1238	"	"	"	77.52
F1239	"	"	"	77.52
F1240	"	"	"	77.52
F1241	"	"	"	77.52
F1242	"	"	"	77.52
F1243	"	"	"	77.52
F1244	"	"	"	77.52
F1245	"	"	"	77.52
F1246	"	"	"	77.52
F1247	"	"	"	77.52
F1248	"	"	"	77.52
F1249	"	"	"	77.52
F1250	"	"	"	77.52
F1251	"	"	"	77.52
F1252	"	"	"	77.52
F1253	"	"	"	77.52
F1254	"	"	"	77.52
F1255	"	"	"	77.52
F1256	"	"	"	77.52
F1257	"	"	"	77.52
F1258	"	"	"	77.52
F1259	"	"	"	77.52
F1260	"	"	"	77.52

Asset Tag. No.	Description	Date Acqd.	Account	Gross Value
				\$
F1261	"	10-53	32016901	77.52
F1262	"	"	"	77.52
F1263	"	"	"	77.52
F1264	"	"	"	77.52
F1265	"	"	"	77.52
F1266	"	"	"	77.52
F1267	"	"	"	77.52
F1268	"	"	"	77.52
F1269	"	"	"	77.52
F1270	"	"	"	77.52
F1271	"	"	"	77.52
F1272	"	"	"	77.52
F1273	"	"	"	77.52
F1274	"	"	"	77.52
F1275	"	"	"	77.52
F1276	"	"	"	77.52
F1277	"	"	"	77.52
F1278	"	"	"	77.52
F1279	"	"	"	77.52
F1280	"	"	"	77.52
F1281	"	"	"	77.52
F1282	"	"	"	77.52
F1283	"	"	"	77.52
F1284	"	"	"	77.52
F1285	"	"	"	77.52
F1286	"	"	"	77.52
F1354	Desk	1-54	32016901	129.60
F1355	"	1-54	"	129.57
F1356	Chair	1-54	"	28.66
F1357	"	"	"	28.67
F1358	"	"	"	28.67
F1359	"	"	"	28.67
F1360	Calculator, Friden	"	32016902	729.94
F1373	Heater, Utility Space	"	32016901	612.54
F1374	" " "	"	"	612.54
F1375	" " "	"	"	612.54
F1376	" " "	"	"	612.54
F1377	" " "	"	"	612.54
F1378	" " "	"	"	612.54
F1422	Desk, Burrough Posting	3-54	"	124.20
F1423	Adding Machine, Underwood	5-54	32016902	372.60
F1425	File, 4-Dr.	"	32016901	86.24
F1426	" "	"	"	86.24
F1427	" "	"	"	86.24
F1428	Chair, Arm	"	"	64.79

Asset Tag. No.	Description	Date Acqd.	Account	Gross Value
				\$
F1429	" "	5-54	32016901	27.35
F1430	" "	"	"	27.36
F1431	" Posture	8-54	"	38.46
F1432	Bin, Parts	"	"	38.43
F1433	" "	"	"	38.43
F1434	" "	"	"	38.43
F1435	" "	"	"	38.43
F1436	" "	"	"	38.43
F1437	" "	"	"	38.43
F1438	" "	"	"	38.43
F1439	" "	"	"	38.43
F1440	" "	"	"	38.43
F1441	" "	"	"	38.43
F1442	" "	"	"	38.43
F1443	" "	"	"	38.43
F1444	" "	"	"	38.43
F1445	" "	"	"	38.43
F1446	" "	"	"	38.43
F1447	" "	"	"	38.62
F1448	Chair, Posture	"	"	38.47
F1449	Bin, Parts	9-54	"	50.95
F1450	" "	"	"	50.95
F1451	" "	"	"	50.95
F1452	" "	"	"	50.95
F1453	" "	"	"	50.95
F1454	" "	"	"	50.95
F1455	File, Letter	"	"	87.10
F1456	" "	"	"	87.09
F1457	Desk, Typewriter	11-54	"	187.20
F1458	" "	11-54	"	187.20
F1459	" "	"	"	187.20
F1460	Steelcase Posture Chair	11-54	32016901	28.08
F1461	Steelcase Posture Chair	11-54	"	28.08
F1462	Steelcase Posture Chair	11-54	"	28.08
F1463	Adding Machine	11-54	32016902	354.90
F1464	Stationery & Wardrobe Cabinet	11-54	32016901	75.59
F1465	Elite Typewriter	11-54	32016902	212.21
F1466	Elite Typewriter	11-54	"	212.21
F1468	Adding Machine	"	"	354.90
F1469	Rotary with Dol. Face Card Frames	1-55	"	695.64
F1470	Typewriter	"	"	211.71
F1471	Adding Machine	2-55	"	406.35
F1472	Typewriter	2-55	"	212.21
F1473	Typewriter	4-55	"	228.75
F1474	Typewriter	4-55	"	228.75
F1475	Globe Table	"	32016901	78.00
F1476	Typewriter Desk	"	"	166.86

Asset Tag. No.	Description	Date Acqd.	Account	Gross Value
				\$
F1477	Posture Chair	4-53	32016901	27.62
F1478	Typewriter Desk	"	"	193.38
F1479	Arm Chair	"	"	91.00
F1480	Arm Chair	"	"	91.00
F1481	Arm Chair	"	"	91.00
F1482	Arm Chair	"	"	91.00
F1483	Arm Chair	"	"	91.00
F1484	Arm Chair	"	"	91.00
F1485	Circular Table	"	"	148.98
F1486	Posture Chair	"	"	76.44
F1487	Lamp	"	"	62.00
F1488	Machine Desk	"	"	170.04
F1489	Walnut Top	"	"	28.08
F1490	Walnut End Panel	"	"	28.08
F1491	Walnut Cabinet-Less Top	"	"	113.10
F1492	Walnut End Table	"	"	76.44
F1493	Pottery Planter	"	"	49.92
F1494	Pottery Planter	"	"	49.92
F1495	Executone System	3-55	"	771.07
F1496	Desk	"	"	182.99
F1497	Desk	"	"	130.83
F1498	Desk	"	"	130.83
F1499	Desk	"	"	130.83
F1500	Desk	"	"	130.83
F3001	Desk	"	"	130.84
F3002	Desk	"	"	130.83
F3003	Desk	"	"	130.83
F3004	Desk	"	"	130.83
F3005	Desk	"	"	130.83
F3006	Desk	"	"	130.84
F3007	Desk	"	"	130.83
F3008	Desk	"	"	130.83
F3009	Desk	"	"	130.83
F3010	Desk	"	"	130.83
F3011	Chair	3-55	32016901	65.42
F3012	Chair	3-55	"	45.08
F3013	Chair	3-55	"	45.08
F3014	Chair	3-55	"	45.09
F3015	Chair	3-55	"	45.08
F3016	Chair	3-55	"	45.08
F3017	Chair	3-55	"	45.09
F3018	Chair	3-55	"	28.95
F3019	Chair	3-55	"	28.95
F3020	Chair	3-55	"	28.95
F3021	Chair	3-55	"	28.95

Asset Tag. No.	Description	Date Acqd.	Account	Gross Value
F3022	Chair	3-55	32016901	\$ 28.95
F3023	Chair	3-55	"	28.95
F3024	Chair	3-55	"	28.95
F3025	Chair	3-55	"	28.95
F3026	Chair	3-55	"	28.95
F3027	Chair	3-55	"	28.95
F3028	Chair	3-55	"	28.95
F3029	Chair	3-55	"	28.95
F3030	Chair	3-55	"	28.95
F3031	Chair	3-55	"	28.95
F3032	Chair	3-55	"	28.95
F3033	Chair	3-55	"	28.95
F3034	Chair	3-55	"	28.95
F3035	Chair	3-55	"	28.95
\$3036	Chair	3-55	"	28.95
F3037	Chair	3-55	"	28.95
F3038	Chair	3-55	"	28.95
F3039	Chair	3-55	"	28.95
F3040	Chair	3-55	"	28.95
F3041	Chair	3-55	"	28.95
F3042	Chair	3-55	"	28.95
F3043	Chair	3-55	"	28.95
F3044	Chair	3-55	"	28.95
F3045	Chair	3-55	"	28.95
F3046	Chair	3-55	"	28.95
F3047	Chair	3-55	"	28.95
F3048	Chair	3-55	"	28.95
F3049	Chair	3-55	"	28.95
F3050	Letter File	3-55	"	87.07
F3051	Letter File	3-55	"	87.11
F3052	Letter File	4-55	"	91.27
F3053	Letter File	4-55	"	91.27
F3054	Chair	4-55	"	27.63
F3055	Chair	4-55	"	27.63
F3056	Chair	4-55	"	27.62
F3057	Table	6-55	"	116.47
F3058	Desk	5-55	"	156.46
F3059	Desk	5-55	"	156.46
F3060	Chair	5-55	"	156.46
F3061	Desk, Magnedex	5-55	32016901	191.16
F3062	Chair, Posture	7-55	"	27.64
F3064	"	"	"	27.62
F3065	Table	"	"	78.01
F3067	Typewriter, IBM Electric	8-55	32016902	474.03
F3068	Copyflex, Brunning	9-55	"	526.10
F3069	Cabinet, Storage	10-55	32016901	80.00
F3070	File	"	"	213.26

Asset Tag. No.	Description	Date Acqd.	Account	Gross Value
				\$
F3071	Desk	10-55	32016901	226.52
F3072	Costumer	"	"	14.60
F3073	"	"	"	14.58
F3074	Cabinet	"	"	129.12
F3075	Addressograph with Desk	12-55	32016902	750.89
F3077	Table	1-56	32016901	145.86
F3078	"	"	"	91.72
F3080	Cabinet	3-56	"	131.97
F3079	File	"	"	211.49
F3081	Cabinet	"	"	131.97
F3082	"	"	"	131.97
F3083	"	"	"	131.99
F3084	Mailing Machine	4-56	"	1,276.69
F3085	Typewriter	5-56	32016902	228.74
F3086	"	"	"	228.75
F3087	Typewriter, Desk	"	32016901	209.29
F3088	"	"	"	209.29
F3089	"	"	"	209.29
F3090	Chair, Posture	"	"	29.45
F3091	"	"	"	29.45
F3092	"	"	"	29.45
F3093	"	"	"	29.45
F3094	Desk	"	"	173.54
F3095	"	"	"	78.98
F3096	Adding Machine	6-56	32016902	524.16
F3097	Typewriter	"	"	468.53
F3098	Comptometer	"	"	764.71
F3099	Chair, Arm Rotary	7-56	32016901	69.41
F3100	Cabinet, Stationery	10-56	"	50.54
F3101	Desk	"	"	162.66
F3102	"	"	"	139.89
F3103	Chair, Arm Rotary	"	"	69.40
F3104	Chair, Side	"	"	46.85
F3105	"	"	"	30.72
F3106	"	"	"	30.71
F3108	Typewriter, IBM Electric	1-57	32016902	666.95
F3110	Desk	4-57	32016901	150.50
F3111	Chair, Side	"	"	32.93
F3112	"	"	"	32.93
F3113	"	"	"	32.93
F3114	"	"	"	32.92
F3115	File	"	"	225.20
F3170	Folding Chair	4-60	32016901	5.25
F3171	Folding Chair	"	"	5.25
F3172	Folding Chair	"	"	5.25
F3173	Folding Chair	"	"	5.25
F3174	Folding Chair	"	"	5.25

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Asset Tag. No.	Description	Date Acqd.	Account	Gross Value
				\$
F3175	Folding Chair	4-60	32016901	5.25
F3176	Folding Chair	"	"	5.25
F3177	Folding Chair	"	"	5.25
F3178	Folding Chair	"	"	5.25
F3179	Folding Chair	"	"	5.25
F3180	Folding Chair	"	"	5.25
F3181	Folding Chair	"	"	5.25
F3182	Folding Chair	"	"	5.25
F3183	Folding Chair	"	"	5.25
F3184	Folding Chair	"	"	5.25
F3185	Folding Chair	"	"	5.25
F3186	Folding Chair	"	"	5.25
F3187	Folding Chair	"	"	5.25
F3188	Folding Chair	"	"	5.25
F3189	Folding Chair	"	"	5.25
F3190	Folding Chair	"	"	5.25
F3191	Folding Chair	"	"	5.25
F3192	Folding Chair	"	"	5.25
F3193	Folding Chair	"	"	5.25
F3194	Folding Chair	"	"	5.25
F3195	Folding Chair	"	"	5.25
F3196	Folding Chair	"	"	5.25
F3197	Folding Chair	"	"	5.25
F3198	Folding Chair	"	"	5.25
F3199	Folding Chair	"	"	5.25
F3200	Folding Chair	"	"	5.25
F3201	Folding Chair	"	"	5.25
F3202	Folding Chair	"	"	5.25
F3203	Folding Chair	"	"	5.25
F3204	Folding Chair	"	"	5.25
F3205	Folding Chair	"	"	5.25
F3206	Folding Chair	"	"	5.25
F3207	Folding Chair	"	"	5.25
F3208	Nasan Table	"	"	37.18
F3209	Nasan Table	"	"	37.18
F3210	Nasan Table	"	"	37.18
F3211	Nasan Table	"	"	37.18
F3212	Carpet	5-60	"	752.50
F3213	Carpet	"	"	285.00
F3214	Steel Top Files	"	"	126.85
F3215	Steel Top Files	"	"	126.86
F3216	Chair	"	"	44.72
F3217	Chair	"	"	44.72
F3218	Chair	"	"	44.72
F3219	Chair	"	"	44.72
F3220	Chair	5-60	32016901	44.72
F3221	Chair	"	"	44.72

Asset Tag. No.	Description	Date Acqd.	Account	Gross Value
				\$
F3222	Couch, Studio	5-60	32016901	119.60
F3223	Couch, Studio	"	"	119.60
F3224	Air Conditioner	6-60	32016902	265.11
F3225	Register	10-60	"	60.00
F3227	Air Conditioner	9-61	"	263.68
F3229	Dictating Machine	10-61	"	287.60
F3230	Projector	11-61	"	500.45
F3231	Copying Machines	12-61	"	373.36
F3232	Typewriter, Royal	2-62	"	241.74
F3233	Typewriter, Royal	2-62	"	241.71
F3234	Typewriter, Royal	2-62	"	241.71
F3235	Typewriter, Royal	2-62	"	241.71
F3236	Typewriter, Royal	2-62	"	241.71
F3237	Typewriter, IBM	3-62	"	507.11
F3238	Typewriter, IBM	3-62	"	622.86
F3239	Typewriter, IBM	3-62	"	507.10
F3240	Typewriter, IBM	3-62	"	507.10
F3241	Typewriter, IBM	3-62	"	507.10
F3242	Typewriter, IBM	3-62	"	507.10
F3243	Typewriter, IBM	3-62	"	507.10
F3244	Typewriter, IBM	3-62	"	507.13
F3245	Desk	3-62	32016901	156.25
F3246	Desk	3-62	"	156.25
F3247	Desk	3-62	"	156.25
F3248	Desk	3-62	"	156.25
F3249	Desk	3-62	"	156.25
F3250	Desk	3-62	"	156.25
F3251	Table	3-62	"	93.93
F3252	Table	3-62	"	93.93
F3253	Table	3-62	"	93.93
F3254	Chair	3-62	"	74.25
F3255	Chair	3-62	"	74.25
F3256	Chair	3-62	"	74.25
F3257	Chair	3-62	"	74.25
F3258	Chair	3-62	"	74.25
F3259	Chair	3-62	"	74.25
F3260	Chair	3-62	"	74.25
F3261	Chair	3-62	"	74.25
F3262	Chair	3-62	"	74.25
F3263	Chair	3-62	"	74.25
F3264	Desk	3-62	"	222.11
F3265	Cabinet	3-62	"	170.61
F3266	Chair	3-62	"	32.93
F3267	Chair	3-62	"	32.93
F3268	Chair	3-62	"	32.93
F3269	Cabinet	4-62	"	549.83
F3270	Desk	4-62	"	166.41

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Asset Tag. No.	Description	Date Acqd.	Account	Gross Value
				\$
F3271	Desk	4-62	32016901	125.53
F3118	Desk	4-57	32016901	150.50
F3119	Chair	5-57	"	214.76
F3120	"	6-57	"	94.37
F3121	Table	"	"	113.15
F3122	Desk	"	"	173.70
F3123	Air Conditioner	8-57	"	295.37
F3126	Flat Top Desk	9-57	"	142.33
F3127	"	"	"	142.33
F3128	"	"	"	142.33
F3129	Desk	"	"	214.17
F3130	Chair	"	"	57.24
F3131	"	"	"	36.77
F3132	"	"	"	36.77
F3133	"	"	"	36.77
F3134	"	"	"	36.77
F3135	"	"	"	36.77
F3136	"	"	"	36.77
F3137	"	"	"	36.77
F3138	"	"	"	36.77
F3139	Letter File	11-57	"	172.26
F3140	"	"	"	172.26
F3141	"	"	"	172.26
F3142	Chair	12-57	"	32.92
F3143	"	"	"	32.93
F3144	"	"	"	32.93
F3145	"	"	"	32.93
F3146	"	"	"	32.93
F3147	"	"	"	32.93
F3148	"	"	"	32.93
F3149	"	"	"	32.93
F3150	Table	2-58	"	102.54
F3151	"	"	"	102.55
F3152	"	"	"	102.54
F3153	"	"	"	102.54
F3154	Table	2-60	"	121.77
F3155	Adding Machine	4-60	32016902	188.85
F3156	Frig. Refrigerator	"	32016901	189.71
F3157	Frig. Air Conditioner	"	"	265.11
F3158	Folding Chair	"	"	5.26
F3159	"	"	"	5.26
F3160	"	"	"	5.26
F3161	"	"	"	5.26
F3162	"	"	"	5.26
F3163	"	"	"	5.26
F3164	"	"	"	5.26
F3165	"	"	"	5.26

Asset Tag. No.	Description	Date Acqd.	Account	Gross Value
				\$
F3166	"	4-60	32016901	5.26
F3167	"	"	"	5.26
F3168	"	"	"	5.25
F3169	"	"	"	5.25
	Bookkeeping machine	6-62	32016902	8,390.93
F3272	Lin. Top	"	32016901	40.56
F3273	Waste Basket	"	"	51.48
F3274	Letter Tray	"	"	29.90
F3275	Desk Orderly	"	"	28.60
F3276	Desk	"	"	848.64
F3277	Credenza	"	"	633.36
F3278	Desk	"	"	331.86
F3279	Cabinet	"	"	108.16
F3280	Cabinet	"	"	108.16
F3281	Cabinet	"	"	88.20
F3282	Sofa	"	"	496.29
F3283	Table	"	"	55.69
F3284	Table	"	"	96.46
F3285	Calculator	12-63	3201602	970.11
F3286	Mimeograph, A.B. Dick	4-64	"	935.48
F3287	Cabinet, Mimeograph	"	"	61.36
F3288				
				<hr/> 139,857.70

PETITIONERS' EXHIBIT C.

Hourly Employees Presently on Rolls
and on Rolls 6/7/65

Name	Flat Rate Per Hour	Duties
Autry, Ronald E.	\$2.20	Pick Up and Delivery
Bell, Willie S.	3.20	Polisher
Bobby, Theartris	3.20	Mechanic
Bonner, Julian Jr.	2.20	Pick Up and Delivery
Bouchard, Marcel T.	3.20	Mechanic
Brinkman, Gary L.	3.20	Mechanic
Cardenas, Alberto	3.20	Polisher
Clayton, Arthur P.	3.20	Mechanic
Crookman, Cleo L.	3.20	Mechanic
Daniels, James E.	2.20	Attendant
Doherty, Malcolm B.	3.20	Mechanic
Doutherd, William E.	3.20	Mechanic
Dungan, Everet G.	3.20	Mechanic
Dugan, William H.	3.20	Mechanic
Easter, Richard D.	2.20	Pick Up and Delivery
Frechette, Jean Roch	3.20	Painter
Fuller, Leon E.	2.20	Washer
Hickman, Forrest G.	3.20	Mechanic
Jackson, Joseph	2.35	Fr. Elevator Operator
Jauregui, Jose	2.20	Attendant
Jimenez, Joe C.	3.20	Trimmer
Jones, Ollie	3.20	Polisher
Keller, Robert R.	3.20	Mechanic
Listo, John J.	3.20	Mechanic
Marino, Louis J.	2.60	Maintenance
Martin, John A.	3.20	Metal Man
Norman, Richard R.	3.20	Lubricator
Palumbo, Dominic	3.20	Mechanic
Payne, George S.	3.20	Mechanic
Perdew, James E.	3.20	Metal Man
Prior, Richard P.	3.20	Lubricator
Reggie, Robert F.	3.20	Mechanic
Sanchez, Antonio	3.20	Metal Man
Saour, Jalal J.	3.20	Mechanic
Secord, Frederick A.	2.35	Attendant
Smith, L. C.	2.35	Attendant
Smith, Wilbert	2.35	Attendant
Ward, Elmer J.	3.20	Mechanic
Wooten, Walter D.	2.20	Chauffeur

*Cadillac Motor Car Division employees prior to June 1, 1965.

PETITIONERS' EXHIBIT D.

Hourly Employees Not Presently on Rolls
But on Rolls 6/7/65

Name	Flat Rate Per Hour	Duties
Glass, Dwight D.	\$3.20	Lubricator
Hathaway, Jerry R.	3.20	Mechanic
Scroggins, Williard H.	2.20	Maintenance
Van De Mark, Edward	3.20	Mechanic
Bell, Sidney	2.20	Attendant
Crim, Charles B.	350.00	Maintenance
Jackson, Spencer L.	3.20	Metal Man
Larkins, William T.	2.20	Attendant

Supervision & Foremen
Service Department as of 6/7/65

Loyd E. Coats	General Service Manager
William T. Hinman	Service Manager
James Heathington	Foreman
Bud L. Holderman	Foreman
William C. Test	Foreman
Philip Meckool	Foreman
LaVerne E. Dickerson	Foreman

GENERAL COUNSEL'S EXHIBIT No. 19.

Superior Court of the State of California
for the County of Los Angeles

No. 863,284.

In the Matter of the Petition of HERBERT A. COOKSEY, individually and in a representative capacity for and on behalf of INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT LODGE 94, AFL-CIO, LOCAL LODGE 1186, AFL-CIO, et al.,

Petitioners,

vs.

CADILLAC MOTOR CAR DIVISION OF GENERAL MOTORS CORP., LOU EHLERS, et al.,
Respondents.

DEPOSITION of JOSEPH G. PAIS,

taken on behalf of Respondent Ehlers, at 615 South Flower Street, Los Angeles, California, commencing at 10:00 A.M., Thursday, July 29, 1965, before Kenneth Werner, CSR, Notary Public, pursuant to Notice on File.

Appearances of Counsel:

For the Petitioners: Richman, Garrett & Ansell, Esqs. By: Gerald Ansell, Esq., 1325 Wilshire Boulevard, Los Angeles, California.

For the Respondent Cadillac Motor Car Division of General Motors Corp.: Aloysius F. Power, Esq., General Counsel, General Motors Corporation, By: George Cherpelis, Esq. and Lawler, Felix & Hall, Esqs., By: Richard D. DeLuce, Esq., 605 West Olympic Boulevard, Los Angeles, California.

For the Respondent Lou Ehlers: Latham & Watkins, Esqs., By: Richard W. Lund, Esq., 615 South Flower Street, Los Angeles, California.

Also Present: H. Burdette Fredricks, Esq., 3600 Wilshire Boulevard, Los Angeles California.

JOSEPH G. PAIS,

having been first duly sworn, deposed and testified as follows:

Direct Examination

By Mr. Lund:

Q. What is your name, please.

A. Joseph G. Pais

Q. And your business address?

A. 2860 Clark Avenue, Detroit, Michigan.

Q. Do you have a business address when you are in Los Angeles? A. No, I do not.

Q. By whom are you employed?

A. The Cadillac Motor Car Division of General Motors Corporation.

Q. How long have you been so employed?

A. Forty years, thirty-nine years and X number of months.

Q. What is your position with Cadillac Motors?

A. Assistant Personnel Director of the Cadillac Motor Car Division.

Q. Has that been your position since at least 1957?

A. No.

Q. When did you become assistant Personnel Director of the Cadillac Motor Car Division? [3]

A. In August of 1958.

Q. What was your position in 1957?

A. Director of Labor Relations.

(Deposition of Joseph G. Pais.)

Q. For how many years before that?

A. Since 1955.

Q. Who is the Personnel Director?

A. Presently?

Q. Yes. A. W. S. Chisholm.

Q. What is the principal business of General Motors?
A. The principal business of Cadillac?

Q. That is what I am going to straighten out right now. Cadillac Motor Car Division is not a separate corporation, is it?
A. No, it is not.

Q. The corporation that employs you is General Motors Corporation, correct?

A. Cadillac is a division of General Motors Corporation, unincorporated.

Q. What is the principal business of General Motors Corporation? I realize you hesitate, because it is so obvious, and I think the court would take judicial notice of it.

A. Well, the principal business is the manufacturing of automobiles, including passenger cars and trucks. And accessories [4]

Q. For these automobiles and cars and trucks.

A. Yes.

Q. And they have several different cars. Do you have different divisions like the Chevrolet Division, Buick Division?
A. Yes, we do.

Q. Among those cars they produce is one commonly known as the Cadillac, is that right?

A. That is true.

Q. Do you have at least a rough idea of how many employees General Motors Corporation has?

Mr. DeLuce: Total.

(Deposition of Joseph G. Pais.)

Mr. Lund: Q. Yes, total, world-wide.

A. Probably 650,000.

Q. It is commonly accepted, is it not, that this is the world's largest corporation? A. I believe it is.

Q. In connection with the manufacture of automobiles and trucks, approximately how many plants does General Motors Corporation have?

A. Oh, approximately 123 plants. Maybe 130.

Q. Most of these 123 to 130 are in the United States?

A. I would say so.

Q. The evidence in this case discloses so far that in 1957, District Lodge 94 of the International Association of Machinists, and its local, 1186, was certified as bargaining [5] agent for certain mechanics and shop employees of the Cadillac Motor Car Division, Los Angeles retail branches at Seventh Street and Wilshire Boulevard, back in 1957. There were some collective bargaining negotiations resulting therefrom. Did you conduct those negotiations on behalf of Cadillac Motor Car Division? A. In 1957, yes.

Q. There was reference previously to the fact that minutes were taken of those negotiation meetings. Do you have copies of those minutes?

Mr. DeLuce: I have them here.

Mr. Lund: May we see them? I do not want to take the time now to run through these, Mr. DeLuce. I am not sure that it would be worth the effort of the parties to take the time or the expense of the transcript, but I would like to look at them during the course of the morning when I will not be holding up the rest of you.

(Deposition of Joseph G. Pais.)

Q. I have before me the top one, which is a document headed "Special Union Management Meeting at Statler Hotel, Los Angeles, California, 2:00 o'clock P.M., August 19, 1957." This is a six-page document. Now, does this look like one of these minutes we just referred to, in the 1957 negotiations? A. Yes.

Q. Who prepared the minutes?

A. I prepared the minutes. [6]

Q. This, of course, would have been subsequent to each meeting. A. Right.

Q. You furnished the union representatives with a copy?

A. Subject to approval of the union.

Q. Did they actually go through some approval stage?

A. Yes, at the next meeting they would approve the prior meeting's minutes.

Q. Were there at times corrections or changes in the minutes? A. Yes.

Q. Do you want to take a look at this? This particular one I do want to have photostated and attached to the deposition.

(There was a discussion off the record.)

Mr. Lund: Q. I have another document. The first one I read from was dated August 19. This is another one which reads "Second Special Union Management Meeting at Statler Hotel, Los Angeles, California, 1:00 O'clock P.M., August 20, 1957." Would that indicate, then, that the first meeting was the one on August 19? A. Right.

Mr. Lund: I would like to identify these for the record. We will identify as Respondent Ehlers' Exhibit

(Deposition of Joseph G. Pais.)

5 the six-page document that you previously mentioned, headed "Special Union Management Meeting at Statler Hotel, [7] Los Angeles, California, 2:00 o'clock P.M., August 19, 1957."

Q. I will ask you then if these are the minutes that were prepared of the negotiation meeting on that date. A. Yes, they are.

Mr. Lund: This will be Respondent Ehlers' Exhibit No. 5.

(The document referred to was marked by the notary public as Respondent Ehlers' Exhibit No. 5 for identification, a photocopy of which is attached hereto.)

Mr. Lund: Q. I would like to identify as Respondent Ehlers' Exhibit 6 a four-page document headed "Second Special Union Management Meeting at Statler Hotel, Los Angeles, California, 1:00 O'clock P.M., August 20, 1957," and I will ask you if these are the minutes that you prepared for the second negotiating meeting in 1957. A. Yes, they are.

(The document referred to was marked by the notary public as Respondent Ehlers' Exhibit No. 6 for identification, a photocopy of which is attached hereto.)

Mr. Lund: Mr. Ansell, would you have any objection if we had photostats made of these documents right away, using the photostats with the deposition at the trial, so I could return these original documents to the Company?

Mr. Ansell: I have no objection to your attaching photostats to the deposition, of course, reserving the right [8] at any hearing or trial to make any legal objection to them.

(Deposition of Joseph G. Pais.)

Mr. Lund: I understand, so far as materiality, but I mean so far as their not producing the original at the hearing or trial. Would it be satisfactory for your purposes?

Mr. Ansell: I am sorry. I am afraid I cannot stipulate to that.

Mr. Lund: Well, we will have them photostated.

Mr. DeLuce: We will retain the originals.

Mr. Lund: And ask that you hold on to them. I will have these photostated sometime during the morning, if I may. I would just like to have copies made for the parties and the deposition.

Mr. DeLuce: Fine.

Mr. Lund: Q. Looking at what we have identified as Respondent Ehlers' Exhibit 5, it purports to have a signature at the end of Page 6. I show you that page and ask you if you saw the gentleman sign that, or do you know whose signature that is?

A. That's the signature of Paul French.

Q. Who is Mr. Paul French?

A. Mr. Paul French was the business representative or business agent that negotiated this contract with me.

Q. Representing the Machinists Union.

A. Representing the Machinists Union.

Q. We might go to the first page and identify the people listed. It says "Present for the Union: Messrs. [9] P. A. French. That is Paul French, I take it, whose signature you just identified? A. That is right.

Q. "K. W. Buckley." Who is Mr. Buckley?

A. Mr. Buckley was a guest of Mr. French's during the negotiations.

(Deposition of Joseph G. Pais.)

Q. Do you know what union he represents?

A. I believe he was with the Painters Union.

Q. Mr. V. Dickerson?

A. Shop committeeman.

Q. Was that from the Bixel branch, do you know?

A. Yes.

Q. Mr. G. Harlan?

A. Shop committeeman from the Bixel Branch.

Q. E. Lee?

A. Shop committeeman from the Bixel branch.

Q. J. Girardi?

A. I don't know. I know Girardi, but I don't know whether he was a committeeman or what.

Q. Was he one of the employees?

A. He was an employee of the Cadillac Motor Car Division.

Q. Was he in the bargaining unit, as you recall it?

A. No, I don't recall that he was in the bargaining unit.

Q. It says "Present for Management: M. S. Lester." [10] Who is Mr. Lester?

A. He was the General Manager of the Cadillac branch.

Q. When you speak there of the Cadillac branch, are you referring to both locations on Wilshire and Bixel?

A. Yes, sir.

Q. Those two, together, were considered by Cadillac as your Los Angeles branch, is that correct?

A. That is correct.

Q. Although they were some five miles removed from each other, some distance like that?

A. That's right.

(Deposition of Joseph G. Pais.)

Q. Mr. Pais is listed here. Mr. J. L. Dinniene. What is Mr. Dinniene's position?

A. Comptroller, Cadillac Motor Car Division, Los Angeles branch.

Q. And W. E. Keane?

A. General Service Manager.

Q. That is the Los Angeles branch.

A. Los Angeles branch.

Q. Were these three men officed at the Bixel location?
A. Yes, they were.

Q. You understand that when I refer to Bixel, I am referring to that Seventh Street address?

A. Yes, I do.

Q. Was it commonly called "Bixel" or "Seventh Street"?
A. "Seventh and Bixel." [11]

Q. All right. I am going to call it "Bixel," using the one word, and you will understand what I mean?

A. All right.

Q. On this six-page document, Respondent Ehlers' Exhibit 5 for identification, there are some markings in pencil, such as "okay", "no," and so on, with a question mark here and there. Do you know in whose handwriting those markings are?
A. Yes, I do.

Q. Whose handwriting is that?
A. Mine.

Q. In that connection, were you the principal spokesman for the company in these negotiations?

A. Yes, I was.

Q. You made the record on these minutes of these "noes" and "yeses" that appear there, and you prepared the minutes and directed the negotiations?

A. Yes, I did.

(Deposition of Joseph G. Pais.)

Q. I call your attention to an item listed here as No. 28, "Assignment of Contract." Do you have any recollection of the actual discussion that occurred at that meeting concerning Item 28?

A. The only discussion that I can recollect is that the union had proposed this clause, and we stated that we were not interested in such a clause, as it was not necessary in the contract, inasmuch as it does not prohibit the union [12] from organizing if we discontinue business.

Q. Organizing what?

A. Organizing hourly rate employees.

Q. Do you mean by some purchaser or successor?

A. No, by the union.

Q. If you discontinued, whom were they going to be organizing, then?

A. Well, what we were saying was that as far as we were concerned, if we ever went out of business, it would be up to the union, if someone took over, to go ahead and organize.

Q. To organize the employees of the purchaser?

A. Or successor.

Q. Do you recall anything further about the discussion on that subject? A. No.

Q. Do you recall any more definitely than appears in these minutes, what the contract language was that the union proposed? A. No, I do not.

Q. What was management's expressed position at this meeting on this proposal, as to whether it was acceptable or not acceptable?

A. We would not accept that clause.

(Deposition of Joseph G. Pais.)

Q. Respondent Ehlers' Exhibit No. 6, covering the minutes of August 20, 1957, shows the following as being [13] present for the union: Mr. French, Mr. Buckley, Mr. Dickerson, Mr. Harlan, Mr. Lee, Mr. Girardi and then apparently there was an addition, an E. N. Anderson. A Yes.

A. Yes.

Q. Do you know who he was, or anything?

A. I'm not sure. I don't remember him.

Q. Those are listed as present for the union. For the management there are the same listed as at the previous meeting.

I wish you would go through the minutes if you will, please, and read into the record, and I think this will probably save us from having to produce the minutes, the dates of the meetings and the persons present at each meeting.

A. Let me ask a question—Do you want the names of both management and the union representatives?

Q. Yes, you might read the heading, which will give us the location, date and time, and then read who were present.

A. "Third Special Union Management Meeting at Statler Hotel, Los Angeles, California, 9:30 A. M., August 21, 1957. Present for the Union: Messrs. P. A. French, K. W. Buckley, E. N. Anderson, V. Dickerson, G. Harlan, E. Lee, and J. Girardi.

"Present for Management: Messrs. M. S. Lester, J. G. Pais, J. L. Dinniene, W. E. Keane. [14]

"Fourth Special Union Management Meeting at Statler Hotel, Los Angeles, California, 1:00 O'clock P. M., August 22, 1957. Present for the Union: Messrs.

(Deposition of Joseph G. Pais.)

P. A. French, K. W. Buckley, V. Dickerson, G. Harlan, E. Lee, J. Girardi. Present for Management: Messrs. M. S. Lester, J. G. Pais, J. L. Dinniene, W. E. Keane.

"Special Union Management Meeting at Mayflower Hotel, Los Angeles, California, 10:00 A. M., September 17, 1957.

"Present for the Union"—

Q. September 17?

A. Right. "Present for the Union: Messrs. P. A. French, K. W. Buckley, V. Dickerson, G. Harlan, E. Lee, J. Girardi.

"Present for Management: Messrs. M. S. Lester, J. G. Pais, J. L. Dinniene, W. E. Keane.

"Special Union Management Meeting at Mayflower Hotel, Los Angeles, California, 2.00 P. M., September 18, 1957.

"Present for the Union: Messrs. P. A. French, K. W. Buckley, V. Dickerson, G. Harlan, E. Lee, J. Girardi.

"Present for Management: Messrs. M. S. Lester, J. G. Pais, J. L. Dinnene, W. E. Keane.

"Special Union Management Meeting at Mayflower Hotel, Los Angeles, California, 2:00 P. M., October 14, 1957.

"Present for the Union: Messrs. P. A. French, [15] C. E. Edwards, K. W. Buckley, V. Dickerson, G. Harlan, E. Lee, J. Girardi.

"Present for Management: Messrs. M. S. Lester, J. G. Pais, J. L. Dinniene, W. E. Keane."

Q. May I ask about that one just a moment, please? I think we have a new name here, C. E. Edwards. Do you know who he was?

(Deposition of Joseph G. Pais.)

A. No, I don't. I don't recall.

Q. Next one?

A. "Special Union Management Meeting at Mayflower Hotel, Los Angeles, California, 10:30 A. M., October 15, 1957.

"Present for the Union: Messrs. P. A. French, C. E. Edwards, K. W. Buckley, V. Dickerson, G. Harlan, E. Lee, J. Girardi.

"Present for Management: Messrs. M. S. Lester, J. G. Pais, J. L. Dinniene, W. E. Keane."

Can we go off the record a minute?

Q. Yes, surely.

(There was a discussion off the record.)

The Witness: Special Union Management Meeting at Mayflower Hotel, Los Angeles, California, 10:00 O'clock A. M., October 17, 1957.

"Present for the Union: Messrs. P. A. French, C. E. Edwards, K. W. Buckley, V. Dickerson, G. Harlan, E. Lee and J. Girardi. [16]

"Present for Management: Messrs. M. S. Lester, J. G. Pais, J. L. Dinniene, W. E. Keane."

Mr. Lund: Q. May I see the last one, if that is the last one you have?

This concludes the last one, October 17. The Union and Management then signed the wage agreement, the contract and supplements A, B and C, and the meeting adjourned at 2:15. Now, do you have with you, by any chance, the documents that this refers to, that were signed?

A. I have a copy of a contract that does not bear the original signatures.

(Deposition of Joseph G. Pais.)

Q. The last minutes refer to signing a wage agreement. I show you a document headed "Local Wage Agreement." Apparently it is multilithed or mimeographed, a two-page document, starting out "This Wage Agreement, entered into this 17th day of October, 1957," and it appears to have the actual signatures. I will ask you if this is the document that is referred to as then being signed, as the Wage Agreement?

A. Yes.

Q. It appears that the dates were left blank and just typed in, apparently on the very day the thing was concluded and signed. That is right at the very beginning.

A. It is typed in, "17th" day.

Q. Apparently it was prepared and everything came out all right, and the date was typed in and it was signed on [17] that day, is that correct?

A. Right. We wrote in one date here. "It is understood by both parties that this Agreement shall continue in full force and effect until October 21st, 1958."

Q. Apparently the duration was not decided until the very last minute.

A. Right.

Then I will show you another document, apparently a multilithed document. Again, it appears that the date was typed in on the first line. It begins "Agreement made and entered into this 17th day of October, 1957." There are also insertions on Page 42, with the dates of October 17, 1957 and October 21, 1958.

While this does not purport to have the actual signatures, it has conformed signatures. I will ask you if

(Deposition of Joseph G. Pais.)

this is the document that was signed on that date which was referred to as "the contract"?

A. Yes, this is the contract.

Q. Now, there is a reference to Supplements A, B and C, which are actually referred to in the document you just referred to me. Were such documents signed statements, or were they physically attached to this Agreement which you have just examined, which is 44 pages, or do you recall how that was handled?

A. They were signed, but they were separate documents.

Q. Each of the subsequent contracts apparently refers [18] to these same exhibits, A, B and C. Were there new ones signed each time, or did this original A, B and C series of agreements remain unchanged, if you recall, through the years?

A. If they were changed, then they would have new signatures.

Mr. Lund: You do not have with you the Exhibits A, B and C?

Mr. DeLuce: No.

Mr. Lund: Q. I presume they will be someplace in your file.

A. I suppose we can find them back in Detroit somewhere.

Mr. Lund: Let me go off the record a moment.

(There was a discussion off the record.)

Mr. Lund: Back on the record. I will reserve—for marking and putting with the deposition when we get it back from the photostaters—the Agreement dated October 17, '57 as Respondent Ehlers' Exhibit No. 8, the Wage Agreement of the same date.

(Deposition of Joseph G. Pais.)

Q. The contract that was signed on that date, October 17, 1957, provided that it was to be effective to October 21, 1958. Did you participate in the negotiations of the 1958 renewal contract? A. Yes, I did.

Mr. Lund: Do we have the minutes of those meetings?

Mr. DeLuce: I don't have them here. Off the record. [19]

(There was a discussion off the record.)

Mr. Lund: Q. As you recall, the 1958 contract was to run for how long, Mr. Pais? A. Three years.

Q. So that would have been the '61 negotiation of a renewal contract. A. That is correct.

Q. And you negotiated the renewal contract of 1961? A. Yes, I did.

Q. For how long was that drawn?

A. Three years.

Q. Until 1964. A. That is correct.

Q. And you negotiated the renewal contract of 1964? A. Yes, I did.

Q. In each of these negotiations were you the principal Management spokesman, directing the negotiations on behalf of Management? A. Yes, I was.

Q. In the negotiations of 1958 or any of the subsequent negotiations, so far as you can recall, did this Item 28 in the original minutes, on the "successors and assigns clause" ever come up again for discussion or presentation? A. No, it did not.

Q. I show you a document, a typed carbon, 18 [20] unnumbered pages, headed "1958 Contract Settlement Agreement." It begins "Agreement dated this 4th day of December, 1958, between Cadillac and District Lodge 94,

(Deposition of Joseph G. Pais.)

Local 1186, Machinists," and also Local Union 1798 of the Painters. It purports to have the actual signatures on the last page. I will ask you if this is the renewal contract that was concluded and signed on the date it bears in 1958.

A. Yes, this is the contract settlement agreement.

Q. It was signed on the date that begins on the first page, or the date was inserted, I assume.

A. The 4th day of December.

Q. 1958. A. 1958.

Q. Will you read who signed it for the company and who signed it for the unions?

A. Paul A. French for the Union; George Harlan, Glen H. Kunkle, H. H. Henley and Russell T. Glover. This is for the International Association of Machinists.

For the Painters Union, R. M. Waite and Edward O. Lee. For Management, it is signed by M. S. Lester, J. L. Dinniene and W. E. Keane.

Q. This copy I have before you is one that was furnished to me by counsel for the Machinists. I see there is a place for a signature there by General Motors Cadillac Motor Car Division, Detroit. Do you recall if you signed this? [21]

A. I don't recall if I signed this.

Q. All right. We have some new names—Kunkle, you thought this name was? A. Kunkle.

Q. Do you know who Kunkle was?

A. He was a shop committeeman.

Q. Do you remember which location?

A. No, I don't.

Q. Mr. Henley?

(Deposition of Joseph G. Pais.)

A. Shop committeeman. Wilshire location.

Q. Russell T. Glover?

A. Shop committeeman, Seventh and Bixel.

Q. For Local 1798 of the Painters Union there was Mr. R. M. Waite. Do you know what his position was?

A. Business agent.

Q. Mr. Edward O. Lee?

A. Shop committeeman.

Q. He was a Painter, I take it? A. Yes.

Q. I show you a multilithed document of some 50 pages. It starts out "Agreement made and entered into this 21st day of October, 1958," and on Page 50 it shows an execution date of the 6th day of January, 1959. I will ask you if this document does not represent the 1957 agreement?

Mr. DeLuce: '58.

Mr. Lund: Q. No, the 1957 agreement with the changes [22] made by the document we have just identified as the "1958 contract settlement agreement."

Mr. DeLuce: Let me see if I understand the question.

The Witness: Yes.

Mr. DeLuce: You are not asking whether this is the 1958 contract, this multilithed document? You are asking whether this is not the 1957 contract as modified by whatever is contained in the 1958 contract settlement agreement? And I suppose this would take a comparison of the '57 contract and the '58 settlement agreement and the '58 contract, to see if that is true.

Mr. Lund: Q. Let us take the first question first. Then the 50-page document I handed you, that is the complete basic agreement for 1958, I take it?

(Deposition of Joseph G. Pais.)

A. That is true.

Q. I take it that through the years, whenever you have these thick agreements, you sign an agreement of the changes you are going to make in the old contract, then you take the old contract and incorporate those changes in it, and then sign a new contract?

A. That is correct.

Q. So, without going back and making a word-by-word comparison, it is a reasonably fair assumption, is it not, that this 1958 agreement you have before you is the '57 agreement with the changes that you signed in the document headed "1958 Contract Settlement Agreement"? [23]

A. Yes.

Q. Do you want to turn to Page 50, and read the date of the signatures on that agreement, and the names of the people?

A. International Association of Machinists—

Q. First, what is the date of signature?

A. Date of signature is the 6th day of January, 1959.

Q. All right. The signators, please.

A. International Association of Machinists, H. A. Cooksey. There is an initial back there, and I can't make that out. Paul A French. George Harlan. Hensley H. Henley. Russell T. Glover. And Glen H. Kunkle.

For the Painters Union, R. M. Waite and Edward O. Lee.

For Cadillac Motor Car Division, Los Angeles branch, M. S. Lester, J. C. Dinniene and W. E. Keane. For the Cadillac Motor Car Division, Detroit, Michigan, J. G. Pais.

(Deposition of Joseph G. Pais.)

Q. At the same time you would have signed that master agreement, I take it you would have signed a local wage agreement?

A. I would say that we would have signed a local wage agreement at the same time.

Q. I have just shown you a multilithed document, three pages long, headed "Local Wage Agreement." This wage agreement, "entered into this 4th day of December, 1958," [24] does not have an execution date, nor does this purport to be a signed copy, the names of the purported signators being typed in. As best you can recall, would that have been the actual local wage agreement signed by the same people who signed the master contract you have just identified?

A. Yes, only that there appears to be a typographical error here that says "Glen H. Runkle" instead of "Kunkle."

Q. All right. Do you recall that the next negotiations would have been in 1961?

A. That is correct.

Q. In 1961 did you enter into a document similar to the one we have looked at, which was typed and headed "1958 Contract Settlement Agreement"? Did you have a similar type of agreement?

A. I believe we did, contract settlement agreement.

Q. That was followed then by the full contract, and the full contract and local wage agreement would have been executed thereafter?

A. That is correct.

Q. I will show you a photostat of what appears to be a multilithed document, 49 pages long, starting out "Agreement made and entered into this 22nd day of

(Deposition of Joseph G. Pais.)

October, 1961." On the 49th page it says it was executed on the 19th day of October, 1961, and it appears to have some signatures. Others apparently were not reproduced through the photostating process, and were inked in. Will you look at this [25] and see if this appears to be the 1961 contract, and if those appear to be the people who signed it? And then would you read the names?

A. This is the 1961 contract.

Q. That is the basic contract, and not the settlement agreement?

A. Basic contract.

Q. And the signators?

A. And the signators for International Association of Machinists are: H. H. Cooksey, with an initial; B. J. Hubert, L. Kaelen, R. T. Glover, Allen Elder, John Schuldt and Bernard K.—I can't make out that last.

Q. The nearest I could make it out was C-a-b-r-a-l. Does it look something like that?

A. Looks like C-a-b-i-a-l.

The Automotive, Marine, Production Finishers Union. John L. Lazzara and Edward O. Lee.

For the Cadillac Motor Car Division, Los Angeles branch, Al Fazackerly, T. E. Cliff, W. E. Keane.

Cadillac Motor Car Division Detroit, Michigan, J. Pais and Albert Pappas.

Q. Do you have the execution date there? What is that?

A. It is the 19th day of October, 1961.

Q. Who is Mr. Fazackerly?

A. Mr. Fazackerly was the general branch manager of [26] the Los Angeles branch.

(Deposition of Joseph G. Pais.)

Q. He replaced— A. Mr. M. S. Lester.

Q. And Mr. Cliff?

A. Is the comptroller for the Los Angeles branch.

Q. He replaced—

A. He replaced Mr. Dinnine.

Q. Mr. Albert Pappas?

A. Mr. Albert Pappas is my associate labor relations representative.

Q. And that was true at this time in October of 1961? That was his position?

A. That is true.

Q. His offices are in Detroit, and were then?

A. That is correct.

Q. I show you what appears to be a photostatic copy of a multilithed document, three pages long, headed "Local Wage Agreement." It begins "This Wage Agreement, entered into this 19th day of October, 1961," and does not purport to have an execution date on Page 3. I think the signatures are the same as you previously read. I will ask you if this does not appear to be the local wage agreement signed the same year, in 1961. A. Yes, it does.

Q. And the persons who appeared to have signed that document are the same as those who signed the master [27] contract? A. Yes.

Q. Do you recall when the 1964 contract was negotiated, or do you have any minutes or notes with you which will help us on that? A. Yes, I do.

Q. Then in the case of 1964, as we did earlier, if you have the minutes—do you have the minutes?

A. Yes, I do.

(Deposition of Joseph G. Pais.)

Q. Read them in order, with the place, date, time and persons present.

A. A preliminary meeting was held in Los Angeles between Management and the District Lodge No. 94, IAM, and the Painters Local No. 1798. Present for the Union were Messrs. Hubert, Lazzara, Glover, Elder and Lee. Present for Management, Messrs. Fazackerly and Cliff.

Q. What was the date of that?

A. The date of that is Thursday, October 8, 1964.

The next meeting is the Los Angeles branch meeting on Local demand between Management and District Lodge 94, IAM and Painters Local 1798, Monday, November 30, 1964. Present for the Union, Messrs. Hubert, Lazzara, Glover, Elder, Lee and Flachi. Present for Management, Messrs. Pais, Fazackerly, Cliff and Pappas.

Third meeting, Los Angeles branch, Cadillac Motor Car Division, Los Angeles, meeting on Local demand between [28] Management and District Lodge 94, IAM and Painters Local 1798, Tuesday, December 1, 1964. Present for the Union, Messrs. Hubert, Lazzara, Glover, Elder, Lee and Flachi. Present for Management, Pais, Fazackerly, Cliff and Pappas. That was all of the meetings.

Q. Do the minutes of that meeting indicate that an agreement was reached at that meeting, and whether or not the contract was actually signed at that meeting?

A. I believe that a contract settlement agreement was signed. Yes, the parties signed and exchanged copies of the contract settlement agreement.

(Deposition of Joseph G. Pais.)

The Union stated it would submit the terms of the contract settlement agreement to the membership for ratification, and notify Management at a later date as to the outcome of this meeting.

Mr. Lund: Do you have that?

Mr. DeLuce: No.

Mr. Lund: Q. Were you subsequently later notified that it was approved? A. Yes.

Q. Do you recall whether—and I do not know whether the minutes would help you or not—in these 1964 negotiations, there was any change in Exhibits A, B and C? A. Yes, there was.

Q. Subsequent to this date of December 1, '54, I take it a Local wage agreement, the basic agreement and the three [29] exhibits, were then executed by the parties on both sides? A. Say that again.

(The reporter read the question.)

The Witness: Yes.

Mr. Lund: Q. Do you have any recollection or notes that might help you determine the date of the execution of those documents?

A. I believe it's my recollection that we executed the contract settlement agreement, the pension plan, the insurance plan and the ISP plan at this time, in this meeting. The basic contract was not signed until subsequent to the contract settlement agreement.

Mr. Lund: Read the answer, please.

(The reporter read the answer.)

Mr. Lund: Q. And it would also be true, I take it, that the Local wage agreement would have been signed subsequently with the basic agreement?

A. Correct.

(Deposition of Joseph G. Pais.)

Q. Do you have any recollection of the dates when those two documents were signed?

A. Talking about the contract itself, no. Let me see.

(There was a discussion off the record.)

The Witness: No, I do not recall.

Mr. Lund: Q. Going back to the minutes of that very first meeting in 1957, where there was a discussion about the "successors and assigns" clause, when you expressed the [30] company's position of rejection of that proposal, did Mr. French or anyone on the Union side say anything to the effect, "Well, that's all right, the contract would be binding in any event on a successor"? A. No.

Q. Were there any Cadillac retail branches in 1964 that were organized by the Union, where the branch was closed out and an independent dealer took over the operation? A. Yes, there was.

Q. What location or locations would that have been?

A. In Detroit, Michigan.

Q. Had there ever been any arbitrations under these series of contracts for the Los Angeles branch that we have been covering this last hour or so, the '57, '58, '61 and '64 contracts? Have there ever been any arbitrations between the company and the unions?

A. No.

Q. When was the first time that you or anyone else on behalf of the company, so far as you are aware, gave any notice or information to the unions of the possible or probable or certain closing of the Los Angeles branch by Cadillac Motor Car Division?

(Deposition of Joseph G. Pais.)

Mr. DeLuce: That is rather a compound question. Do you want break that down? Start one at a time. It is a little easier, I think.

Mr. Lund: Q. When was the first time you discussed [31] with or communicated with any of the representatives of the Union about the possible closing by the Cadillac Motor Car Division of the Los Angeles branch? A. On January 12, 1965.

Q. Was that a meeting, or something on that date?

A. Yes, that was a meeting.

Q. Were any minutes prepared of that meeting?

A. No.

Q. Where was this meeting?

A. This meeting was held at the Beverly Hilton Hotel.

Q. Do you recall the time of day?

A. Approximately 10:00 o'clock.

Q. Do you recall how this meeting was set up, how it was arranged for the people to be there?

A. Yes, I do.

Q. All right, tell us about that.

A. I attempted to call and contact Mr. Barney Hubert on January the 6th to set up a meeting with him. I was unsuccessful in doing that. However, I did contact Mr. Paul French, and asked if he—

Q. On that same day, January 6?

A. On the same date. And asked if he could arrange to contact Barney Hubert and John Lazzara, and if it was at all possible, to set up a meeting for January the 12th at the Beverly Hilton Hotel. That I would like to talk to them. [32]

Q. Did you say anything about the subject?

(Deposition of Joseph G. Pais.)

A. No, I did not.

Q. Who is Mr. Barney Hubert? We have not previously identified him in your deposition.

A. Barney Hubert is the business representative of the International Association of Machinists.

Q. And he participated in the negotiations of the 1961 and 1964 contracts, did he not, for the Machinists?

A. That is correct.

Q. And Mr. John Lazzara?

A. Is the business representative of the Painters Union.

Q. He participated at least in the 1964 negotiations?

A. Yes, and '65.

Q. Then do you want to tell us what happened at this meeting on January 12, 1965?

A. We met. I introduced—

Q. Just the three of you? A. No.

Q. All right, then you had better identify who else was there.

A. Mr. T. Hopkins, Assistant General Sales Manager, Cadillac Motor Car Division, in charge of the western half of the United States.

Q. Did you and Mr. Hubert and Mr. Lazzara—

A. Four. [33]

Q. Do you want to tell us what happened at that meeting?

A. I introduced Mr. Hopkins, and we told them that—

Q. When you say "we," you had better try, the best you can, to recall who it is that you mean.

A. I told them that the Cadillac management was seriously thinking about discontinuing participating in

(Deposition of Joseph G. Pais.)

the retailing and servicing of Cadillac automobiles in Los Angeles, that it was contemplated that this function would be handled by independent dealers. At that particular time I could not tell them as to when this would be effective, nor who the dealers might be, but I wanted them to know about it. I indicated that we would be willing to discuss any problems that they thought might arise.

Q. Pardon me. You said you indicated. Is that what you said?

A. I told them that we'd be happy to discuss any problems that might arise in conjunction with this matter, and that we would keep them informed of the progress or the lack of progress, and then we just kind of discussed the fact that Cadillac was really not in the retail business, but was primarily a manufacturing concern.

Q. How long did this meeting last, approximately?

A. Oh, I would say the meeting lasted probably an hour and a half, an hour and three-quarters.

Q. Can you tell us, if you recall, anything that [34] Mr. Hubert or Mr. Lazzara said?

A. Well, Mr. Hubert, there was no objection or no questions about our going out of business or—

Mr. Ansell: Excuse me. I am going to move to strike the answer as not responsive. The question, sir, was what Mr. Hubert said.

Mr. Lund: Q. So, will you tell us what Mr. Hubert said?

A. Mr. Hubert, as I recall, said "Well, I can understand that Cadillac is principally a manufacturing outfit. Do you know who the dealers are?" I told him

(Deposition of Joseph G. Pais.)

and Mr. Hopkins told him that we did not know who the dealers would be, that we hadn't come to that stage yet.

I believe he—. He mentioned something about the contract, and I don't recall just what he said about the contract, but I do recall that my response was that we were going to fulfill our obligations as far as all of the benefits, vacation plans that the employees would be entitled to under our contract. That's all I can recall Mr. Hubert saying on this particular subject.

Q. Do you recall Mr. Lazzara saying anything?

A. Mr. Lazzara more or less asked about the same questions that Mr. Hubert did.

Q. That was who the dealers were going to be?

A. Right, who were the dealers going to be. They didn't press for when would this happen, although they asked [35] the question, and we repeated "We do not know, but we will keep you informed." Then there was a general discussion of just a lot of other things that were not incidental to this particular subject.

Q. You have testified all you can recall that Hubert or Lazzara said about this particular subject?

A. Right.

Q. Did either Mr. Hubert or Mr. Lazzara say anything to the effect that they or the unions objected to Cadillac's discontinuing this operation?

A. No, they did not.

Q. Did Mr. Hubert or Mr. Lazzara say anything to the effect that "You told us during the 1964 negotiations that nothing like this was in contemplation," or any words to that effect?

(Deposition of Joseph G. Pais.)

A. No, they did not.

Q. Let me go back to the 1964 negotiations. During the negotiations of the 1964 contract, do you recall that anything was said at all about the possibility of Cadillac Motor Car Division discontinuing its Los Angeles branches?

A. Yes, I believe that someone made a statement—I believe it was Mr. Lee made the statement, and this was either during the final minutes of negotiations or after we had concluded the negotiations—and he asked “Mr. Pais, is there anything to this rumor that Cadillac might go out of the retail business?” And I answered that as far as I was [36] concerned and knew, they had no idea of going out of the retail business.

I might add that this same statement of a rumor, was made by the union during our discussion in 1961 and in 1964.

Q. All right, what was the next communication between Cadillac Motor Car Division or yourself, personally, and the unions, concerning this subject of discontinuing the Los Angeles branches?

A. I believe that I corresponded with Mr. Hubert and Mr. Lazzara on March 26, 1965, by letter, and told them that we were making progress, and that although even at that time I did not know when the effective date would be, nor who the dealers were, in any event, we were making progress, and if they so desired, I would be happy to meet with them in Los Angeles and discuss any problems or anything they they might want to discuss on this subject matter.

Q. Are you talking now about what you said in the letter of March 26?

A. Yes.

(Deposition of Joseph G. Pais.)

Q. I show you what purports to be a letter dated March 26, 1965, on Cadillac Motor Car Division letterhead, apparently written by you as Assistant Personnel Director, to Mr. Hubert, and I ask you if this is the letter to which you referred. A. Yes. [37]

Q. Did you write a similar letter to Mr. Lazzara?

A. Yes, I did.

Q. You will notice this letter refers to a letter of January 21, 1965. Did you write such a letter?

A. Yes, I did.

Mr. Lund: Do you have that letter?

Mr. DeLuce: Yes.

Mr. Lund: May we have the letter or letters of January 21, '65?

Mr. DeLuce: We have some copies.

Mr. Lund: If you could keep your copies from being marked up like the other originals, if you have some Xerox copies, we can work from that, if it is agreeable with Mr. Ansell.

Mr. Ansell: Surely.

(There was a discussion off the record.)

Mr. Lund: Q. Mr. Pais, I show you a document headed "Confidential," dated January 21, 1965, purporting to be a copy of a letter from you to the attention of Mr. Hubert. I assume this is a photostat of your office copy of this letter.

A. Yes, it is.

Mr. Lund: Will you mark that as Respondent's Exhibit 9?

(the document referred to was marked by the notary public as Respondent Ehlers' Exhibit No. 9 for identification, and is attached hereto.) [38]

(Deposition of Joseph G. Pais.)

Mr. Lund: Q. That letter which we have marked as Respondent's Exhibit 9 was transmitted by you on or about that date, January 21, 1965, to Mr. Hubert?

A. Yes.

Q. I show you another document, a photostat of what appears to be your office copy of a letter headed "Confidential," dated January 21, 1965, to the Painters Local 1798, attention Mr. Lazzara, and I ask you if that is a copy of the letter you wrote to Mr. Lazzara on or about that time?

A. Yes, it is.

Q. That was transmitted on or about that date to Mr. Lazzara?

A. Yes, it was.

Mr. Lund: Will you please mark that as Respondent Ehlers' No. 10.

(The document referred to was marked by the notary public as Respondent Ehlers' Exhibit No. 10 for identification, and is attached hereto.)

Mr. Lund: Q. Let me go back just a moment. At the meeting of January 12 did Mr. Lazzara or Mr. Hubert raise any question about what would happen to the employees?

A. I don't recall.

Q. Mr. Pais, I show you a photostatic copy of what appears to be a letter dated March 26, 1965 on the letterhead of Cadillac Motor Car Division, addressed to District [39] Lodge 94, attention Mr. Hubert. It appears to have been signed by you. I will ask you if this is a letter which you wrote and transmitted to Mr. Hubert on or about that date.

Mr. Fredricks: What is that date, again?

Mr. Lund: March 26, 1965.

(Deposition of Joseph G. Pais.)

The Witness: Yes, this is a letter addressed to Mr. Barney Hubert, dated March 26.

Mr. Lund: Would you mark that, please, as Respondents' Exhibit 11.

(The document referred to was marked by the notary public as Respondent Ehlers' Exhibit No. 11 for identification, and is attached hereto.)

Mr. Lund: Q. Now I show you a photostatic copy of what appears to be your office copy of a letter dated March 26, 1965 to the Painters Local 1798, attention Mr. Lazzara, and ask you if that is a copy of a letter that you wrote and transmitted to Mr. Lazzara on or about that date?

A. Yes, it is.

Mr. Lund: Would you please mark that as Respondent Ehlers' Exhibit No. 12.

(The document referred to was marked by the notary public as Respondent Ehlers' Exhibit No. 12 for identification, and is attached hereto.) [40]

Mr. Lund: Q. In the letter of January 21, you stated "We would be happy to meet with you again to further explain and explore the possible effects and any problems that might be associated with such a change, at which time we would welcome any suggestions or comments which you might wish to offer for our mutual consideration."

Did you have any response from Mr. Hubert or Mr. Lazzara as a result of this comment in your letter of January 21, 1965? A. No, I did not.

Q. I notice in your letter of March 26, 1965, you have what appears to be substantially the statement. "I will be happy to meet with you again to discuss and

(Deposition of Joseph G. Pais.)

explore the possible effects and any problems that might be associated with such a change, at which time we would welcome any suggestions or comments which you might wish to offer for our mutual consideration."

Did you have any response from either Mr. Hubert or Mr. Lazzara to that comment in your letter of March 26, 1965? A. No, I did not.

Q. When was the next occasion that you communicated with Mr. Lazzara or Mr. Hubert about the closing of the Los Angeles branch?

A. As I recall, I received a telephone call from Mr. Lazzara around in May, the early part of May, in which [41] he stated that his attorneys would like to talk to me. I asked Mr. Lazzara what they wanted to talk to me about, and he said, well, what they wanted to know was, "What are the names of the dealers that are going to take over?"

And I said, "Well, John," I said, "I was going to—inasmuch as I told you that I would inform you on that, while you are on the phone, let me try to see if I can find out from the Sales Division if any decision has been made."

I contacted the Sales Division, and I found out for the first time, myself, that Mr. Ehlers had been selected for the Wilshire branch, and that Mr. LaRue Thomas had been selected for the Bixel location. I called Lazzara back and gave him that information, and then I believe I confirmed that with a letter.

Mr. Lund: Do you have that letter?

Mr. DeLuce: Yes.

The Witness: We had some meetings prior to that, though.

(Deposition of Joseph G. Pais.)

Mr. Lund: Q. With Lazzara and Hubert?

A. Yes. I'm getting a little—

Q. I will come back to those, then.

A. Okay. I'm sure we had some meetings before that. Just happened to think.

Mr. DeLuce: That is all right.

Mr. Lund: Q. I show you what appears to be your office copy of a letter dated May 10, 1965, addressed to Mr. Lazzara, and ask if you transmitted the original of that [42] letter to Mr. Lazzara on or about that date?

A. Yes.

Q. Do you recall whether or not, at the same time, you transmitted a copy of that letter to Mr. Hubert?

A. Yes, I did. Carbon copy.

Mr. Lund: May we have that marked as Respondent Ehlers' Exhibit 13, please.

(The document referred to was marked by the notary public as Respondent Ehlers' Exhibit No. 13 for identification, and is attached hereto.)

Mr. Lund: Q. Now, let us go back. After the letters of March 26, '65, can you recall the next time you had a meeting or discussion with Mr. Hubert or Mr. Lazzara about this subject?

A. Yes. I called Mr. Hubert sometime in April, the early part of April, and I asked him if he had received my letter of March 26, and he said, yes, he had received it. And I said, "Well, Barney, we're continually making progress, and if we continue to make the progress that we made since I wrote you that letter, it's possible that we might set up a target date, that Cadillac would set up a target date as to the discontinuance of our participation in the retail business."

(Deposition of Joseph G. Pais.)

And I indicated, I asked him if we couldn't set up a meeting to discuss this. And he said, yes, he could set [43] up a meeting. I asked him if he would contact John Lazzara and have him at that meeting. And I think we mutually agreed to meet in April, the early part of April on April 12, I believe it was, in Los Angeles, at the Beverly Hilton.

Q. Was such a meeting held on April 12?

A. Yes, there was.

Q. Did you have any other communications in between that time and before April 12, with Mr. Hubert or Mr. Lazzara, about this matter? A. No.

Q. Then you did have a meeting on April 12 at the Beverly Hilton? A. Yes.

Q. Who was present at that meeting?

A. Mr. Hopkins, myself and Mr. Hubert.

Q. Mr. Lazzara was not present?

A. No, he wasn't. He could not make that meeting.

Q. What time of day was this meeting?

A. I believe it was in the afternoon, sometime in the afternoon.

Q. All right, do you want to tell us about what was said at that meeting?

A. Well, at that meeting, as I recall, I told Barney that we had made sufficient progress that although at that particular time we did not know, a dealer had not been selected, nevertheless, we were setting a [44] target date for May 28, or the last day of business in the month, and I thought that we should arrange to meet with the shop committee and tell them about it.

We wanted to tell our employees about it. We wanted to notify our management people about this. And that

(Deposition of Joseph G. Pais.)

we wanted to meet with the shop committee so if they had any questions, we'd want to answer any questions that they might have. And so forth. And he agreed to that.

Q. He said "Okay," or words to that effect?

A. He said "Okay, fine, we'll set up a meeting for the 14th." And we agreed to set up the meeting for, I believe it was, 3:00 o'clock in the afternoon at the Los Angeles branch.

Q. April 14?

A. Yes. He agreed to call the shop committee and notify them of the meeting.

Q. When you say he agreed—

A. He said he would do it, and did it, because the meeting did take place.

Q. Is there anything else that you can recall about this meeting at the Beverly Hilton with Mr. Hubert?

A. Barney was a little—he didn't know just what he would tell the shop committee, and he discussed with me as to who should open up this meeting. And I said, "Well, Barney, I think that maybe you should open up the meeting." He seemed [45] a little reluctant to do it, but in any event, he said "All right, I'll open the meeting." That was the discussion that we had.

Q. How long did this meeting last?

A. Oh, I'd say about half an hour, three-quarters of an hour.

Q. Was the next occurrence, then, this meeting on April 14? A. That is correct.

Q. That was where?

A. That was at the Los Angeles branch, Bixel and Seventh Avenue, in Mr. Fazackerly's office.

(Deposition of Joseph G. Pais.)

Q. At 3:00 P.M.?

A. Approximately 3:00 P.M., yes.

Q. Who was present?

A. Mr. Hubert, Mr. Glover, Mr. Falchi, Mr. Lee. Mr. Elders, I believe. The shop committee was present.

Q. You said "Ehlers" or "Elders"?

A. Elders.

Q. E-l-d-e-r-s?

A. E-l-d-e-r-s. He was the shop committeeman. The shop committee was present.

Q. Did you have any minutes of this meeting?

A. No. Mr. Fazackerly was there. Mr. Cliff was there. Mr. Hopkins was there, and I was there.

Q. All right, please tell us what transpired at that [46] meeting.

A. Well, Barney opened up the meeting by saying that I had contacted him and that I had something to talk about, that pertained to the branch. And then he said "I'd like to turn the meeting over to Mr. Pais, who will explain."

So I opened up the meeting by telling them that Cadillac Motor Car Division was going to go out of the retail end of the business, that the retail business would be handled by independent dealers, that concurrent with this meeting, the employees were being notified by their supervisors that we were going out of the business, that the target date that we had set was May 28.

And I told them that certainly, once they got out on the floor at the conclusion of this meeting, that there was no question in my mind that the people would be contacting them with questions relative to our going out of the retail business, and that I was sure they had

(Deposition of Joseph G. Pais.)

some questions that they wanted to ask. And I would be happy to review any questions and to answer any questions that they might have so that they, too, would have an answer to give to anyone who might contact them.

I went on at great length to explain that our employees would be put on layoff status, that some of the people might decide after they heard this news that they would look around for other jobs. I wanted to stress to [47] them that if anyone wanted to quit, to try to talk them out of quitting, because we certainly would cooperate with them in putting them on a layoff status, if they found another job somewhere, so that they wouldn't be deprived of any of the benefits that they would receive under our contract.

A lengthy discussion, as I recall it, was held about this subject of quitting—"What happen if I get a job somewhere else?" and "What happens if I get a job in another General Motors plant?"

We explained all these things. An extensive discussion was held on pensions, vacations, paid absence allowances, insurance, Blue Cross, Blue Shield. I told the committee that in addition to answering all their questions, that I would have a brochure prepared—it's not actually a brochure, but a memorandum of some sort—which would explain all of the benefits that they are entitled to have. And that was about it.

Q. When you said there was a lengthy discussion concerning what happens when a man quits or takes a job elsewhere, goes to another GM plant and so on, this was a discussion which the committeemen participated in by questions and that sort of thing?

A. Right. That's right.

(Deposition of Joseph G. Pais.)

Q. Was there anything specific said about the rights, if any, for employment at other GM plants, or efforts to be placed at other GM plants? [48]

A. No. I brought that point up. I said, "Now, if someone asks, 'Do we have any—if we get a job in another GM plant, do we have seniority rights there?'"

I explained to them that they wanted to be very careful about how they answered this question, if it came up, because if an employee obtained employment at another General Motors plant, as far as the benefits sections are concerned, pension or whatever vacations, paid absence allowances, that they had some equity in that in another General Motors plant, but to be careful not to tell them that, their seniority, for purposes of lay-off and recall, went over to another plant.

Someone asked the question, "Can they go out and apply?" I answered that if it was me—depending upon what kind of a position I held here, whether I was an incentive worker or non-productive worker—tomorrow morning, on my way to work, I would stop in wherever I thought that I would like to work, whether it be South Gate—I wasn't too familiar, and I told them about the locations of the plants here, but South Gate, I understand, there is a BOP plant out here, and there is a Chevrolet plant in Van Nuys—and put in an application.

Q. What do the letters, "BOP," mean with reference to South Gate?

A. Buick-Oldsmobile-Pontiac, which is now changed, the title of the plant has been changed to [49] General Motors Assembly Division.

(Deposition of Joseph G. Pais.)

Q. Any questions about whether or not the new dealers would be—whether or not General Motors would require the new dealers to hire the existing work force?

A. No, we never said anything. I believe we did say something to the effect that "There is a possibility that the new dealers will be interviewing some of you people and possibly hiring you to work for them," and I think the question came up where one man said, "Well, supposing that I'm hired by a new dealer and then I decide that I'd get a job at a General Motors plant, and I get it? What happens to my equity?"

We said "Nothing happens to your equity, provided that your length of service with us or your seniority with us entitles you to the benefits."

Q. Then that was the substance of that meeting that you recall saying, about the status of the workers?

A. I think another significant part that I brought up was the fact that if there was any question brought up on the floor and they didn't know the answer, and it had not been explored in this meeting, that they should contact Mr. Cliff, and that if Mr. Cliff didn't have the answer, he would contact me.

There was one other thing that came out of this meeting relative to this business of getting another job somewhere else, and coming in and quitting. It was agreed [50] during this meeting that I would prepare a supplemental agreement whereby an individual with seniority could be put on a layoff status and laid off out of line of seniority, so that we would not be obligated under the contract, because, in effect, then we would be laying him off, and we'd be in violation of the main contract.

(Deposition of Joseph G. Pais.)

Subsequent to that meeting, I did prepare a Memorandum of Understanding which was executed by the parties.

Q. You mentioned in this meeting that you told the committee the employees were being informed at the same time that you were talking to them.

A. Right.

Q. Do you know who informed the employees?

A. The supervisors were told to inform the employees.

Q. Do you know who so told the supervisors, and when?

A. I told the supervisors.

Q. That same day?

A. Yes. Just prior to meeting with the Union.

Q. What did you tell the supervisors?

A. Well, of course, they didn't know anything about this, either, about our going out of the retail business, so I went through the same thing that I more or less told the Union, that we were going to go out of business.

Q. This was a meeting you held with the supervisors?

A. With the supervisors. [51]

Q. Before the meeting with the shop committee.

A. With the supervisors, management people.

Q. From both locations?

A. From both locations.

Q. What did you tell them at that meeting with reference to notifying the employees?

A. Told them to notify the employees that Cadillac Motor Car Division was going to go out of the retail business, and that the target date was May the 28th, and that a brochure, pamphlet, would be passed out to

(Deposition of Joseph G. Pais.)

them, explaining the benefits that they have under the current contract. And if there was any questions, write them down.

Again, I went through this business of if someone comes in and wants to quit, and I went through that procedure. I went through the procedure of telling them to "Make sure that you don't say to anyone that if they get a job in another General Motors plant, that their seniority goes over. Their seniority is only good for pensions, vacations and other benefits."

Someone asked the question, "Do the other plants have ISP?" I said, "There could be some plants with ISP. I believe that the plants in this area are covered by a different plan, SUB."

And that was the type of discussion. And then, of course, there was a discussion relative to their own individual problems as salaried employees. [52]

Q. I don't want to get into the problems of the salaried employees.

At the meeting with the shop committee, was anything said by you or was any question asked about who would be the dealer or dealers?

A. I don't recall whether that came up, but if it did, our answer would have been that we did not know at that time, but that I would keep Mr. Hubert informed, or Mr. Lazzara.

Q. Up to this point had you had any oral or written communications with the attorneys for either of the unions?

A. Up to the meeting of—

Q. April 14? A. No.

Q. All right, what was the next thing you did then in connection with the Los Angeles plant closing, so

(Deposition of Joseph G. Pais.)

far as the hourly employees, the bargaining unit employees were concerned, or the unions or their representatives, after April 14?

A. April 14? After April 14 I had General Motors prepare this brochure. I sent it out here. I asked that it be distributed to all the employees. I sent out the new pamphlets on the ISP, and the pension plan, the insurance program, and asked that that be passed out. I had had this contact from Mr. Lazzara, as I indicated before.

Q. Yes.

A. I believe before I came out here, I received a [53] telegram, I believe it was from Mr. Geffner. I believe I received a telegram from him.

Q. Do you recall if this was after the distribution of these brochures or the memorandum that you mentioned?

A. I believe that the brochures and pamphlets were all distributed.

Q. Do you have the brochures? They may have a date.

A. No, I don't have the brochures. Oh, you mean the so-called, what I called "brochures"?

Q. Memorandum.

A. Memorandum? I believe my attorney has it.

Mr. Lund: Do you have those memorandums he is talking about?

Mr. Cherpelis: Summary of benefits?

Mr. Lund: Yes.

Mr. DeLuce: We have the telegram as well.

Mr. Lund: Yes, let us see it.

(There was a discussion off the record.)

(Deposition of Joseph G. Pais.)

The Witness: I don't know whether I testified about this memorandum here.

Mr. Lund: Q. Yes, we want to get that in the proper chronological order, as best we can.

Mr. Cherpelis: Here is the summary of benefits.

Mr. Lund: Is this a copy I can have?

Mr. Cherpelis: Yes.

Mr. Lund: Q. Now, if I may backtrack a little bit, [54] at the meeting of April 14, the whole shop committee was present, but Mr. Lazzara was not there.

A. No, he wasn't. I had called John that morning from the hotel. Inasmuch as he had not been in the meeting of May 12—

Mr. Cherpelis: April 12.

The Witness:—April 12, Barney had indicated that he had tried to get John to the shop committee meeting. I called him from the Beverly Hilton and asked him if he would attend the meeting. He said that if at all possible, he would attend the meeting, but that if he couldn't make it, that Ed Lee would represent him.

He asked me, as I recall, if I knew who the new dealers were, yet, and I said "No, but I'll certainly let you know as soon as the Sales Department tell me."

Mr. Lund: Q. At the meeting that afternoon on April 14, did Mr. Hubert or anyone for the Union propose that they negotiate with General Motors any severance benefits or additional benefits for the employees?

A. No.

Q. Did anyone make any other proposals or suggestions with reference to negotiations or supplemental agreements pertaining to the effect on the employees of this contemplated termination? A. No.

(Deposition of Joseph G. Pais.)

Q. Was there any discussion as to the effect of the [55] Union contract on the closing? A. No.

Q. Did you say anything, yourself, about what effect, if any, this would have on the Union agreement, the closing?

A. Only that Cadillac Motor Car Division would abide by its contract as far as all of the benefit provisions and whatever provisions that they had an equity in.

Q. You have shown me a document headed "Cadillac Motor Car Division, Supplemental Agreement to Agreement Dated December 1, 1964," with the date of the agreement inserted as the 28th day of April, 1965. I ask you if this is the agreement that you mentioned on April 14, that you were going to prepare? I am now showing you a photostat of that document.

A. Yes, this is the supplemental agreement that I prepared.

Q. What did you do with that, about procuring the signatures?

A. I sent copies of this to Mr. Tom Cliff and asked that he obtain the signatures of both unions, and that he should sign it and have Mr. Fazackerly sign it.

Q. Then the original of which this is a photostat was subsequently returned to you with these signatures on it? A. That is correct.

Mr. Lund: I would like to have this identified as Respondent Ehlers' No. 14. [56]

(The document referred to was marked by the notary public as Respondent Ehlers' Exhibit No. 14 for identification, and is attached hereto.)

(Deposition of Joseph G. Pais.)

Mr. Lund: Q. Mr. Pais, your counsel has handed me a document headed "Summary of Benefit Plan Provisions Applicable to Hourly Rate Employees, Cadillac Motor Car Division, Los Angeles, California," which is a six-page multilithed document which has a date down at the bottom of May 17, '65. I ask you if you will explain what that document is.

A. The document is a summary of benefit plan provisions applicable to hourly rate employees of the Los Angeles branch.

Q. What was done with it?

A. It was sent to, copies of this were sent to Mr. Tom Cliff with instructions to pass them out to each employee.

Q. Do you have any idea of the date when you sent them to him, or the date when they were so passed out?

A. Well, I would say that it was probably—this was typed up on the 17th; I would say that it would be within just a few days afterward when he received them, that he would have passed them out. I don't know just exactly the date that he would have passed them out.

Mr. Lund: Will you mark the document we have just [57] identified as Respondent Ehlers' Exhibit No. 15, please.

(The document referred to was marked by the notary public as Respondent Ehlers' Exhibit No. 15 for identification, and is attached hereto.)

Mr. Lund: Q. Your counsel has permitted us to examine the original and then has furnished us with a photostat of a wire dated May 19, directed from Leo

(Deposition of Joseph G. Pais.)

Geffner. I am showing you the photostat, and I will ask you if you received that wire on or about that date.

A. Yes, I did.

Mr. Lund: Will the reporter please mark that as Respondent Ehlers' Exhibit 16.

(The document referred to was marked by the notary public as Respondent Ehlers' Exhibit No. 16 for identification, and is attached hereto.)

Mr. Lund: Why don't we adjourn for lunch at this point?

(Whereupon, at 12:15 P.M., Thursday, July 29, 1965, a recess was taken until 1:30 P.M.) [58]

(Whereupon, at 1:30 P.M., Thursday, July 29, 1965, the taking of the deposition of JOSEPH G. PAIS was resumed at the same place, the same persons present.)

JOSEPH G. PAIS,

having been previously duly sworn, deposed and testified further as follows:

DIRECT EXAMINATION (Continuing)

Mr. Lund: I will try to get something straightened out here on the exhibits. I had photostats made and returned those two original minutes to you, Mr. DeLuce.

Mr. DeLuce: Yes.

Mr. Lund: And we have not had time to have photostats made of the agreement dated October 17, 1957, or the Local wage agreement of the same date.

These are your copies, Mr. Ansell, so I will have him mark these are we have already saved the numbers.

The basic agreement is Respondent Ehlers' Exhibit 7, and the Local wage agreement is Respondent Ehlers'

(Deposition of Joseph G. Pais.)

Exhibit 8. With your permission, I will withdraw them, make photostats, and send the photostat copies to the reporter and return the documents you furnished us to the Union.

Mr. Ansell: That is all right.

Mr. Cherpelis: Which one is going to be 7? [59]

Mr. Lund: 7 is the basic agreement, and 8 is the Local Wage Agreement.

(The documents referred to were marked by the notary public as Respondent Ehlers' Exhibits 7 and 8, respectively, photocopies of which are attached hereto.)

Mr. Lund: Q. Mr. Pais, in connection with the Respondent Ehlers' Exhibit No. 15, this "Summary of Benefit Plan Provisions," dated May 17, '65, you also mentioned earlier some brochures about the benefit plan. I think I know to what you have reference—those large, booklet-like things. Do you recall if those were sent to Los Angeles for distribution to the employees or—

A. We sent them to L. A., and I was informed that they had been distributed to the employees.

Q. Do you recall if that was before or after this memorandum that you have before you as Respondent's Exhibit 15? A. I can't say.

Q. There are four of these brochures, are there not? Do you remember the names of those four brochures?

A. Yes. This "Summary of Benefit Plan Provisions" says at the top, "Note: This summary describes the various benefit plan provisions in general terms only. The employee booklets entitled 'Your GM Income

(Deposition of Joseph G. Pais.)

Security Plan Benefits,' 'Your Insurance Benefits' and 'Your Pension Benefits' [60] describe GM benefit plans in greater detail."

Q. Those are the four? A. Three.

Q. There is an introductory one.

A. A summary on GM benefits. Correct. Also, an envelope, I believe.

Q. It is a very fancy looking thing, very clever.

A. Also, an envelope.

Q. Very good. May we go off the record?

(There was a discussion off the record.)

Mr. Lund: Q. Between the meeting of April 14 and the phone call from Mr. Lazzara on May 10, do you recall any further discussion or communications with the Union officials or representatives?

A. No, I don't.

Q. All right. Then on May 10 you wrote to Mr. Lazzara, and on May 19, I think it is, you got a wire. Now, as a result of this wire, which has been identified as Respondent Ehlers' Exhibit 16, you telephoned Mr. Geffner? A. Yes, I did.

Q. And you talked to him on that date?

A. Yes, I did.

Q. Do you want to tell us about that conversation?

A. Well, I called Mr. Geffner and told him that I was in receipt of a telegram, and I told him that I had been informed or made aware of the fact that [61] applications of some sort had been distributed at the Los Angeles branch. That I had stopped this so-called solicitation because approval had not been received by the management to do this, and that as far as I knew,

(Deposition of Joseph G. Pais.)

as of this morning, all of that had been stopped, and all of the applications had been picked up.

He said "Well, I'm very happy to hear that." And at that point he said "Just a minute, Mr. Pais. I have a note here"—something to the effect that Mr. Lazzara was calling him. He came back on the phone and said "I just talked to Mr. Lazzara, and we're satisfied that the applications have been all picked up."

I said, "Well, Mr. Geffner, in regard to the latter part of your telegram, where you are requesting that I meet with you to discuss problems of the operation, what problems, if any, do you have in mind, so that I can be prepared to answer them when I get out there and set up a meeting?" He said, "Well, on the basis of the stopping of this application," he said, "I see no reason for having a meeting. However, I know that the people on the shop committee would appreciate your putting in an appearance in L. A. so they can ask you questions."

And I said, well, it was certainly my intent that before we went out of the business here, that I would be in L. A. He thanked me and I thanked him, and that was the end of the telephone conversation. [62]

Q. Had there been any communications or other discussions with the Union officials, as best you can recall, between the letter of May 10 and the wire of May 19?

A. May 10? No, I don't recall.

Q. In connection with the wire, I presume that before calling Mr. Geffner, you talked to someone in Los Angeles to get something about the facts?

A. No. I did not talk to anyone in Los Angeles.

(Deposition of Joseph G. Pais.)

Q. Did you understand from the wire or from your discussion with Mr. Geffner that this assertion that "motor car dealers association soliciting application for employment," that was allegedly being done at both locations, or just one of the locations in Los Angeles?

A. From the telegram it said that there was both branches in Los Angeles. Now, in answer to your question, Mr. Lund, you asked me, if I got your question right: Did I have any conversation after I received this telegram, with anyone in Los Angeles?

Q. Yes. A. After I received the telegram.

Q. Yes. A. My answer is "No."

Q. Apparently you did before you received the telegram. You had been apprised of this development before the telegram?

A. The day before Mr. Tom Cliff called me and told me [63] that he had received a call—and I can't recall who called him, whether it was Lazzara or Mr. Geffner himself, or whether he said "Union attorneys"—and he told me that he was informed that the applications were being passed out. He had made a check, and it was true that they were.

I asked him, "Did you give him permission? Did they clear with you?" He said, "No." I said, "No one has the authority to distribute any type of literature, make any solicitation on our premises, and therefore I am instructing you to go out and stop it, pick up all the applications, and return them to whoever started this thing." So I was aware of that on the day before I received this wire.

Q. Did Mr. Cliff indicate whether these applications were being passed out at both locations or just the Bixel, or just the Wilshire?

(Deposition of Joseph G. Pais.)

A. I don't recall that.

Q. When was your next contract with any of the Union representatives—Hubert, Lazzara—concerning this closing?

A. My next contact with Hubert or Lazzara or any Union representative concerning this closing—we're up to May 19, the date of the wire. I believe I received a letter from Mr. Ansell sometime before I came out here.

Q. Just a moment. You referred to the fact that you believe you received a letter from Mr. Ansell. I show you a photostatic copy of what purports to be a letter dated [64] May 17, 1965, from Herbert M. Ansell and addressed to you. It apparently has a receipt date stamped on it, "May 21, 1965." Is that receipt stamped correctly? A. May 21, 1965.

Q. Is that the letter to which you refer, then? You received that on May 21? A. Yes.

Q. What was done with that letter? Did you reply in writing, or call him, or what?

A. I called him immediately, and he wasn't in, so I talked with his secretary, and I, asked the secretary if she was familiar with a letter from Mr. Ansell to me requesting certain information, and she said, yes, she was familiar with it. I didn't ask her her name.

And I told her to tell Mr. Ansell that Mr. Ehlers is not the dealer at Seventh and Bixel, because that's what he talked about, but that Mr. Ehlers will be the dealer at Wilshire Boulevard. And then I gave her the address of Mr. Ehlers, which was 10300 West Wilshire.

(Deposition of Joseph G. Pais.)

Q. This longhand writing on that May 17 letter, is that in your own handwriting? A. Yes, sir.

Q. Was it put down on that day that you received it, May 21? A. Yes, sir.

Mr. Lund: Will you please mark this May 17 letter as [65] Respondent Ehlers' Exhibit 17.

(The document referred to was marked by the notary public as Respondent Ehlers' Exhibit No. 17 for identification, and is attached hereto.)

Mr. Lund: Q. The next development in the chronological sequence, if you can recall?

A. Then I made arrangements and came out here the last week in May.

Q. Before you get into that, have you related all of the communications that you can recall at this moment, from April 14 to this last week in May, between you and Mr. Hubert and Mr. Lazzara, and the correspondence from their counsel and so on? A. Yes.

Q. During that same period—April 14 on up to the last week in May—you were not in Los Angeles at any time? A. No, not that I recall.

Q. Would you by any chance have communicated or talked to any of the other bargaining unit employees during this period from April 14 on?

A. April 14 on?

Q. After that April 14 meeting.

A. At any time?

Mr. DeLuce: But not including the last week.

Mr. Lund: Q. Up to the last week, yes. [66]

A. No, not that I can recollect.

Q. All right, let us get down to the last week. If you will tell us what happened in sequence there, as best you can recall?

(Deposition of Joseph G. Pais.)

A. Well, I came into Los Angeles, I went to the branch.

Q. When you say "the branch," do you mean Seventh and Bixel? A. Bixel Avenue.

Q. Do you recall what date that was?

A. I believe that was on a Tuesday.

Q. Of the last week in May.

A. The last week in May.

Q. The 25th?

Mr. DeLuce: Yes.

The Witness: I arrived here in the afternoon or early afternoon, and went to the Bixel location. And went to see Mr. Tom Cliff. He said that—

Mr. Lund: Q. Well, let me interrupt. I am only interested in your activity in connection directly with the Union representatives and/or the hourly rated employees within the bargaining unit. Now, maybe you have to tell us what Mr. Cliff told you, to explain what you did next. I don't know. It is all right.

A. The next thing I did, as soon as I entered the office, Mr. Cliff said, "Mr. Ansell called and would like to have you call him." I don't know how he knew I was in town, [67] but I called Mr. Ansell.

We exchanged greetings. I asked if he had any questions. He said he just wanted to thank me for giving his secretary the information. He said, "I've been trying to get hold of Mr. Ehlers. I'm having a hard time getting ahold of him." And "Could you help me? Could you tell me where he might be located?"

And I said, "Well, just a minute." And I asked Mr. Cliff, I said, "Do you know if Mr. Ehlers is in town?" And he said, "Yes. Mr. Ehlers is over at Wilshire." So

(Deposition of Joseph G. Pais.)

I informed Mr. Ansell that Mr. Ehlers was, at the present time, as far as we knew, over at the Wilshire location.

Q. Was this Mr. Herbert Ansell you were talking to at the time? A. Yes.

Q. Did you say "Yes"?

A. Yes. He thanked me. I told him that I would be in town for a few days, and that if he had any other questions, to feel free to contact me.

Then we went ahead about our business with Mr. Cliff, and then the following morning, which would be the 26th, I called Mr. Hubert and I told Mr. Hubert that I was in town, and I think he indicated that he knew I was in town. I told him, "Barney," I said, "I want to let you know that I'm going to talk to all of the hourly rated people. I want to answer any questions that they have." [68]

He says "Well, I'm glad you're going to do that, Joe, and I appreciate it very much." He indicated that there had been a Union meeting sometime before, in the evening, that there was a lot of questions that people had asked that apparently they couldn't answer, and I said "Well, Barney, we've had a very good relationship. I'm going to be here another day or so." And he said "I'd like to see you before you leave." And I said, "Well, fine. Why don't we have lunch? Are you available tomorrow?" Which was a Thursday, I believe.

And I said, "If you can get hold of John Lazzara, I mean, we ought to get together and have lunch." And he said he certainly wanted to do that, and wanted to shake hands, at least, and say good-bye. And so that was the end of that telephone conversation.

(Deposition of Joseph G. Pais.)

At 10:00 o'clock that morning Mr. Ullen and I started out on the top floor, and we gathered all of the employees on each floor. We did this to all of the branch, including the annex, and we talked to all of the employees in groups.

Q. First, will you explain who Mr. Ullen is, and his first name?

A. Mr. Ullen is supervisor of payrolls.

Q. What is his first name? A. Roger.

Q. Roger Ullen? [69]

A. Right. Mr. Ullen had an envelope which he passed out to each employee. Each envelope was marked with the employee's name on it. Mr. Ullen introduced me and stated that effective at the close of business on May 28, that they were being laid off from the Cadillac Motor Car Division and would be on layoff status. He handed each one the envelope and explained that this envelope consisted of "the moneys you have in the ISP fund," a letter of instructions in there as to where they should pay their insurance after August 1, and talked about the ISP fund and explained that to them.

Q. Are you jumping from what is the envelope to what is being said?

A. Yes. I, myself, don't know everything that was in the envelope, but I do know that when people opened it, there was some material in there, something in there which pertained to the ISP, how much money they had in the fund, and an address where to mail in their hospitalization or insurance. I believe there was some forms in there, either withdrawal or continuation of the ISP.

We asked each employee at that time whether they had received the booklets as well as the summary of benefits, and we received an affirmative answer.

(Deposition of Joseph G. Pais.)

Q. Let me interrupt you there, and I hope I don't make you lose your train of thought. Do you recall whether or not those booklets—these are the four that we previously [70] discussed—and the summary of benefits, which we have identified here, whether or not you had copies of those sent to the Union representatives, Mr. Hubert and/or Mr. Lazzara?

A. I believe I asked Mr. Tom Cliff to send copies to Mr. Lazzara and Mr. Hubert, and I'm not so sure, I'm not sure of this, whether he also sent them to the attorneys. I'm not sure of that.

Q. I interrupted you, and you were explaining that you or Mr. Ullen, I guess it was Mr. Ullen, asked each of the employees if they had received the booklets, and this summary of benefits memo.

A. Then he turned the thing over to me, and I thanked the employees for their loyal service, the fine job that they had done for us while we were in business. I explained to them that if they would like to continue with General Motors, that there were certain plants in the area, and they should put in an application.

Also, Mr. Ullen said to them that he had been informed that people were available to interview anyone who were desirous of being interviewed by the dealer. This is at Bixel, now.

The employees asked some questions about the ISP. I tried to point out to the employees the importance of leaving their ISP money in the fund, because if they withdrew it, then they would be considered a "quit" for certain provisions of the benefit plans, and urged them that if they [71] didn't need the money, they shouldn't take it out. On the other hand, if they so applied it, they

(Deposition of Joseph G. Pais.)

could use that money to pay up their insurance, and we would take care of that.

They asked general questions. And we did this to all of the employees. I shook hands with all of them, wished them good luck. They thanked me, and that was it.

Then we went, that afternoon, as I recall, I believe we went that afternoon to the Wilshire branch, and we did the same thing there.

Q. Did you say these were in group meetings?

A. Yes, on each floor, or in the annex, or that service downstairs, there.

Q. At any of these group meetings at Wilshire do you recall any questions being asked by any of the employees as to whether or not they were going to be hired by the new dealer? A. I don't recall.

Q. Do you recall saying anything at Wilshire to any of these groups as to whether or not there was a possibility of any of them being hired by the new dealer?

A. I think that Mr. Ullen said that the employees possibly would be interviewed or that there was going to be an interview of some of the employees.

Q. Were the employees given any written form of notice of their layoff, or severance, or whatever you call it? [72] A. I don't know.

Q. Not so far as you are aware? Did anyone outside of Cadillac Motor Car Division personnel and on behalf of Cadillac Motor Car Division notify any of these employees that they were laid off?

Better read the question.

(The reporter read the question.)

Mr. Lund: Q. Do you understand it?

(Deposition of Joseph G. Pais.)

A. You're asking me, did anybody else but Cadillac notify the employees that they were being laid off?

Q. Right. A. Not to my knowledge.

Q. As far as you were aware, did Lou Ehlers or Lou Ehlers Cadillac inform any of the employees at Wilshire branch on or before May 28 that they were being laid off or terminated?

A. Not to my knowledge.

Q. It is your information that this was done by the Cadillac Motor Car Division, is that correct?

A. That is correct.

Q. The next day, then, did you have your luncheon meeting with Mr. Hubert and Mr. Lazzara?

A. Yes, we did.

Q. That was apparently the same day that you went in the morning and started out with the Bixel groups?

A. No. [73]

Q. It was on Thursday that you had your luncheon? A. That's right.

Q. Where was that?

A. That was at the Statler-Hilton Hotel.

Q. Who was there?

A. Myself, Mr. Hubert and Mr. Lazzara.

Q. Outside of slapping each other on the back and toasting each other and saying farewells, what discussion was there, if any, about the closing of these two branches?

A. Well, he, Lazzara was more or less the principal spokesman. Barney was shaking his head; he thanked me for, started out by thanking me for coming to Los Angeles, talking to the employees; told me that he had had some calls, and that people expressed appreciation of

(Deposition of Joseph G. Pais.)

what we had done, but as far as the Cadillac Motor Car Division was concerned, their relationship with us had been of the highest, and that he thought that Cadillac had handled this closing in a very good manner.

He made the statement that "Do you know, Joe, you're going to be back in Detroit, but you're going to see some fireworks around here." And I said, "What do you mean by that, John?" And he said something to the effect that—well, he said "We've been trying to get ahold of Lou Ehlers and this man, LaRue," and he said "I can't blame Lou Ehlers too much, but this Thomas LaRue or LaRue Thomas, we've dealt with him in the Harbor area"—is it?—"Harbor area for [74] 10 years or more," and that he had made some, that LaRue had made some remark to somebody in the Union, by gosh, they weren't, the Union wasn't going to organize them up here.

And I said, "Well, that kind of surprises me, John." I said, "I thought that my understanding was that the people were being interviewed for possible placement with these dealerships, or were going to be interviewed." And he said, "Yes, but why are they waiting until now?"

"Well," I said, "John, if you recall, somebody, either you or somebody, had stopped the application form that was being passed out, as far as I know." And he said, "Oh, sure, because that was a motor car dealer application." Of course, that was news to me. I mean.

But I'm interested, and I said, "Well, what does that have to do with it?" He said, "Well, you know that you are the only two places that are organized in L. A.

(Deposition of Joseph G. Pais.)

as far as the retail outlets are concerned." And he said, "My feeling is that they would use these applications for some motive or other."

Well, I said, "I'm surprised at that, John. I can't understand it." Well, he said, "Things are different in Los Angeles. It's hard to organize people." I said, "You have a National Labor Relations Board." And he says "Yes, but we've tried and we've had costly strikes, and it's cost us a lot of money." But he said, "Joe, I can guarantee you that you'll be sitting in Detroit and see the fireworks [75] out here."

Well, then we discussed other things. We just discussed everything in general.

Q. I don't get anything out of the closing, at all.

A. Just that, and that was it.

Q. Was anything said about the Union agreement between GM and the unions? A. No.

Q. Anything about the fact that one of these dealers had been advertising in newspapers for shop mechanics, and so on?

A. I think that someone said there that—I think that something like this came out, that inasmuch as they hadn't been interviewing—

Q. Had or hadn't?

A. Hadn't. That John felt that they were going to do hiring of other people, something to that effect.

Q. But you do not recall any specific reference to the advertisements? A. No.

Q. That is the sum and substance of that meeting?

A. Yes. We shook hands, said good-bye, and that was the end.

(Deposition of Joseph G. Pais.)

Q. Was that the last conversation with Mr. Lazara or Mr. Hubert?

A. I haven't talked to them since. [76]

Q. Did Mr. Lou Ehlers at any time speak to you and request that you or Cadillac Motor Car Division or General Motors discharge or fire or lay off the employees at the Wilshire agency? A. No, sir.

Mr. Fredricks: Excuse me, may I insert the same question here on behalf of LaRue Thomas, or Thomas Cadillac?

The Witness: Same answer—no, sir.

Mr. Fredricks: Thank you.

Mr. Lund: Q. Any further communications from the counsel for either the Painters or the Machinists Union?

A. I believe there was another letter, and also a telephone call.

Q. Let us see if your counsel has the letter, and we might get the sequence.

A. This letter I received on June the 14th. It's dated June the 8th, but I received it on June the 14th. And it's from, jointly from Mr. Ansell and Mr. Geffner.

Mr. Lund: Will you please mark this letter dated June 8, 1965, on the letterhead of Richman, Garrett & Ansell, to Mr. Pais, as Respondent Ehlers' Exhibit 18.

(The document referred to was marked by the notary public as Respondent Ehlers' Exhibit No. 18 for identification, and is attached hereto.)

Mr. Lund: Q. Did you make any reply to that letter? [77]

A. No, I did not.

(Deposition of Joseph G. Pais.)

Q. Did you have any other communication from the attorneys for either union, either in writing or orally?

A. I received a call. I say I received a call—a call was made to my office by Mr. Ansell on 6-29-65, and he left a message with my secretary. My secretary took it down in longhand, and then typed this up.

Q. Let me see it. This pertained to the application which was going to be made on that date by Mr. Ansell in the Superior Court for temporary restraining order, is that not correct? The memorandum?

A. Yes.

Q. All right, we will not need it for this record.

That then exhausts the communications and conversations between you and the counsel and—

A. No, I believe I received another call. Now, I can't pinpoint the date, and I can't remember whether it was Mr. Ansell or Mr. Geffner, but it was the week, it was either, it was the week of the 4th of July. And let's see. The 4th of July was on a Monday. Was that the 5th of July, Monday?

Q. The 4th was on a Sunday; we observed it on Monday.

A. I left town that week, so it had to be either on a Tuesday or early morning, Wednesday.

Q. You mean, Tuesday—

A. And I doubt whether it would be early morning Wednesday. [78]

Q. —June 2nd or 3rd, you are now talking about, or the following week?

A. No, I'm talking about July.

Q. July 6 or—

(Deposition of Joseph G. Pais.)

A. Or 7th. I received a call from one of these men. I'm sorry, It slipped in my mind as to who it was, but nevertheless, they were inquiring, they inquired of me who—"Do you have attorneys that represent General Motors in California?" And, of course, I couldn't answer that question. He said, "Well, who should I contact in General Motors?" And I told them to contact Mr. A. F. Powers, General Counsel of General Motors. And he asked me for the telephone number, and I gave him the telephone number. He thanked me, and that was it.

Q. During all of this period of time beginning with the meeting, I think it was, January 12, I believe, of 1965, and right up to June or July, did you or anyone else on behalf of the Cadillac Motor Car Division, as far as you were aware, refuse at any time to negotiate or discuss with Mr. Hubert or Mr. Lazzara or attorneys for any of the unions any of the problems they envisioned, or questions that might have arisen?

A. We were always available and willing to meet with them.

Q. During all this period of time did any of the union representatives, including their attorneys, make any [79] proposals or suggestions to you or anyone else in the Cadillac Motor Car Division, so far as you are aware, concerning any arrangements that would be made with the dealer that they should hire the existing employees, or they should assume the contract, the Union agreement? Anything of that nature?

A. No.

Q. Did any of them at any time ask you to intervene with the dealers and see if you could persuade

(Deposition of Joseph G. Pais.)

them to assume the Union contract and/or to hire the existing employees?

A. No. I believe that in one of the conversations that I had, that either John or Hubert talked about—and this was before the dealers were, we even knew the names—I told them that if I was approached by the dealers on anything pertaining to our operation, our relationship, (and I believe I told Mr. Ansell this, too) that as far as I was concerned, if I was asked the question, that all I could say to the new owners would be that the relationship between the Cadillac Motor Car Division and the two unions had been very, very good, and that we had enjoyed our relationship over the years.

Q. Do you recall when you first ever met Mr. Ehlers?

A. I met Mr. Ehlers for the first time on the day, on the evening of the day that I and Mr. Ullen talked to the employees at Wilshire. That was the first time. That evening, after we got through talking with the employees, [80] was the first time that I had ever met Mr. Ehlers.

Mr. DeLuce: That was in the last week in May?

The Witness: That was in the last week in May. That would have been on—let's see. Wednesday, I believe.

Mr. Lund: Q. Under the GM plan, as I understand it, the pension plan, an employee with a minimum of 10 years of service has the right to retire after age 60, but as I read the plan, there is no right to retire between 55 and 60. It is a mutual thing between the company and the employee, is that correct?

A. That's correct.

(Deposition of Joseph G. Pais.)

Q. Were there any arrangements made in connection with the closing of these branches, for letting anyone retire who had the minimum service requirement but who was just age 55 and had not reached age 60?

A. Yes. Mr. Ullen, in our contacts with the employees, as I recall it, covered that point, too, and in each of the groups of employees, someone who was over 55 and had more than 10 years in the plan, he would say "Now, Mr. So-and-so, I'd like to talk to you privately, because you would retire if you so elect." And we would do it on a mutually satisfactory basis.

Q. Regarding the records of those employees who worked at the Wilshire branch up until May 28 of '65, do you know where they would be kept in Los Angeles, if at all? That is, records pertaining to their hire dates, their length of [81] service, their benefits, whether they took out their ISP, whether they retired under the benefit program, what amounts they were paid on their vacation termination pay, their unused absence pay, and that sort of records and information.

A. Where are they now?

Q. Are they in Los Angeles, and would they be in Los Angeles?

A. To the best of my knowledge, those records would probably now be in Detroit.

Q. Now I am going to go back a little bit. Could I see the minutes of the meeting of October 15, 1957?

Mr. DeLuce: There are minutes for August 19, 1957, which you have marked as Exhibit 5.

Mr. Lund: October 15, 1957.

Mr. DeLuce: Excuse me. Yes, here there are.

(Deposition of Joseph G. Pais.)

Mr. Lund: Q. Mr. Pais, I show you the typed minutes of the meeting of October 15, 1957, consisting of three pages, and ask you if those are the minutes that you prepared of that meeting of October 15, 1957.

A. Yes.

Q. And copies of those minutes were submitted to the Union representatives and approved by them?

A. They were accepted.

Q. We have photostated the top page only, which is the only one, I think, that conceivably can have ers' Exhibit No. 6. Showing you Page 5, I will ask the reporter [82] to mark that as Respondent Ehlers' Exhibit 19.

(The document referred to was marked by the notary public as Respondent Ehlers' Exhibit No. 19 for identification, and is attached hereto.)

Mr. Lund: Q. I believe I may have neglected to ask you something in connection with Respondent Ehlers' Exhibit No. 6. Showing you Page 5, I will ask you if that was Mr. Paul French's signature on those minutes.

A. Yes, to the best of my knowledge.

Q. In the 1957 negotiations, do you recall that the Union representatives from time to time would refer to specific provisions of the national agreement between GM and UAW?

Mr. DeLuce: Which year was that?

Mr. Lund: Q. 1957.

A. I don't recall.

(There was a discussion off the record.)

The Witness: Is this what you are talking about?

(Deposition of Joseph G. Pais.)

Mr. Lund: Q. Yes. I show you the minutes of August 21, 1957 and ask you if that does not refresh your recollection that the Union representatives refer to specific provisions and paragraphs in the national master agreement between GM and the UAW?

A. Yes. The minutes speak for themselves.

Q. Well, I am not going to put the minutes in evidence. [83] That is why I wanted your testimony to that effect.

A. Yes.

Q. That is correct, is it not?

A. Yes.

Mr. DeLuce: Off the record.

(There was a discussion off the record.)

Mr. Lund: Q. Do you have any recollection in the later negotiations in '58, '61 and '64 that the Union representatives either had in front of them—or had copies of or at least showed knowledge of—the provisions of the then current master agreement between GM and the UAW?

A. I can't recall whether they specifically had something in front of them, or this or that, but I certainly, from a conversation during negotiations, I was certainly aware that they knew about the new national agreements.

Q. Right.

A. Or certain provisions of the new national agreements.

Mr. Lund: Mr. DeLuce, do you have the 1957 NLRB documents?

Mr. DeLuce: Mr. Cherpelis has that.

Mr. Lund: May we examine those and make photo-stats of them for the deposition?

(Deposition of Joseph G. Pais.)

Mr. Cherpelis: Well, some of these things are confidential files, and I want to know what you want.

Mr. Lund: What I want is the matters that are of public [84] record, with one exception. I presume there would have been an election agreement.

Mr. Cherpelis: Yes.

Mr. Lund: There would have been a tally.

Mr. Cherpelis: I have a petition.

Mr. Lund: I am not interested in a petition. There would have been a tally of ballots.

Mr. Cherpelis: Yes, I have that. Which election are we talking about, now?

Mr. Lund: The 1957 election.

Mr. DeLuce: I have the wrong file. Yes, tally of ballots.

Mr. Lund: Tally of ballots. Certification of representatives. Those are all official public documents.

Mr. Cherpelis: Yes.

Mr. Lund: The one thing that would not be official would be the eligibility lists that were furnished by the General Motors Corporation to the Labor Board. Those would be the four documents that I am interested in.

Mr. Cherpelis: You wanted a tally of ballots, certification of representatives—

Mr. Lund: Election agreement.

Mr. Cherpelis: Stipulation for certification.

Mr. Lund: If we may take a five-minute recess, I will photostat those and we will work from the photostats, and I will not even bother with extra copies. [85]

Mr. Cherpelis: Off the record.

(Whereupon, a brief recess was taken.)

(Deposition of Joseph G. Pais.)

Mr. Lund: Q. Mr. Pais, I show you what appears to be the back half of a stipulation for an NLRB Certification and Election Agreement in Case No. 21-RC-4864. I assume you have seen enough of these forms?

A. Not too many.

Q. You have seen that as an election agreement, with the NLRB agreement, I take it? Go ahead.

Mr. Cherpelis: Do you want to go off just a second?

Mr. Lund: Yes.

(There was a discussion off the record.)

Mr. Lund: Q. You may not be familiar with those forms.

A. I'm not familiar with it. No, I'm not.

(There was a discussion off the record.)

Mr. Lund: Will you mark these documents in order, please. Respondent Ehlers' Exhibit 20 is the purported election agreement dated July 2, 1957.

(The document referred to was marked by the notary public as Respondent Ehlers' Exhibit No. 20 for identification, and is attached hereto.)

Mr. Lund: Identify as Respondent Ehlers' Exhibit 21 a three-page list of employees of Cadillac Motor Car Division, Los Angeles, California, two pages indicated West Seventh [86] Street and one page indicating Wilshire Boulevard.

(The document referred to was marked by the notary public as Respondent Ehlers' Exhibit No. 21 for identification, and is attached hereto.)

Mr. Lund: Now, will you mark as Respondent Ehlers' Exhibit 22 the tally of ballots dated July 24, 1957.

(Deposition of Joseph G. Pais.)

(The document referred to was marked by the notary public as Respondent Ehlers' Exhibit No. 22 for identification, and is attached hereto.)

Mr. Lund: And please mark as Respondent Ehlers' Exhibit 23 a certification of representatives issued by the National Labor Relations Board under date of August 1, 1957.

(The document referred to was marked by the notary public as Respondent Ehlers' Exhibit No. 23 for identification, and is attached hereto.)

Mr. Lund: I will ask you, Mr. Ansell, if we can stipulate with reference to Respondent Ehlers' Exhibits 20, 22 and 23, that these are photographs of official government NLRB documents in this case, 21-RC-4864?

Mr. Ansell: So stipulated.

Mr. Lund: I will also ask you if you can stipulate that if an attorney for the General Motors Corporation Legal Department were called as a witness, he would testify [87] that he had examined the corporation's only file pertaining to this particular election proceeding which contains the documents, of which we have produced photostatic copies, and that the only payroll list therein contained is that which I have identified as Respondent's Exhibit 21?

Mr. Ansell: Well, I would stipulate that the list that you have marked as Exhibit 21 is the only one contained in the file, but I wouldn't be able to go further and say that this, in fact, is the official eligibility list that was turned over to the Labor Board. Otherwise, so stipulate.

Mr. Lund: Thank you.

(Deposition of Joseph G. Pais.)

You would so stipulate, Mr. DeLuce?

Mr. DeLuce: Apparently it is the only one in the Legal Department's file, yes. I assume it is a correct list.

Mr. Cherpelis: I assume so, too.

Mr. Lund: All right, I have just a couple more minor items.

Q. In the 1957 negotiations, Mr. Pais, do you recall that among the group of employees for whom the Union negotiated and you covered by contract were men who picked up customers' cars and delivered them back to the customers?

A. I believe there was. I'm not sure.

Q. Let me ask you this. What is a car attendant, under this Union Agreement?

A. I believe a car attendant was those people who moved cars from one floor to the other. I think that that's [88] what their primary job was, to move cars around the place.

Q. Do you have any recollection of how many of those there may have been at the Bixel and Wilshire addresses, combined, in 1957?

A. No, I do not.

Q. Do you recall the classification that the contract covered, so far as the employees who picked up cars and delivered them to customers were concerned?

A. Do I recall the classification?

Q. Yes, what classification of the contract covered those employees?

A. I believe it was car attendants.

Q. During all this period from January 1, 1965 through May 28, 1965, did any representative of either of the unions—the Machinists or the Painters—protest

(Deposition of Joseph G. Pais.)

or object that your company could not discontinue its retail operations? A. No.

Q. Or that it could not establish independent dealerships in lieu of your continuing the operations?

A. No.

Q. Or that you could not discontinue the operations without making any prospective dealer agree to be bound by the contract? A. Never.

Q. Or without making any prospective dealer agree to [89] hire the existing employees? A. No.

Q. Anything of that effect? A. No.

Q. No grievance of protest of any of the action that General Motors was taking during this five- or six-months period, including the announcement to the employees of layoff as of May 28?

A. No grievance, no protest.

Q. Subsequent to May 28, did the Union ever lodge a grievance orally or in writing with General Motors concerning the termination of these employees?

A. No.

Mr. Lund: That is all.

Mr. Ansell: I have no questions.

Mr. DeLuce: I have a couple of questions. Off the record.

(There was a discussion off the record.)

CROSS-EXAMINATION

By Mr. DeLuce:

Q. Mr. Pais, I show you Respondent Ehlers' No. 16 for identification, which is a copy of the telegram to you from Mr. Geffner of May 19, 1965. I show you

(Deposition of Joseph G. Pais.)

that there appears to be handwriting on the top of the telegram. Is that your handwriting? [90]

A. Yes, it is.

Q. And there is handwriting at the foot of the telegram, "1520 Wilshire Boulevard." Whose handwriting is that, if you know? A. I don't know.

Q. I show you Exhibit 17, which is a copy of a letter to you from Herbert Ansell, dated May 17, 1965. There is handwriting at the foot of the letter, to the left of the signature box. Do you recognize the handwriting? A. Yes, I do.

Q. Whose handwriting is that? A. Mine.

Q. When did you place that handwriting on it?

A. Immediately after I talked to his secretary.

Q. As regards Respondent Ehlers' No. 16, the handwriting identified at the top of the telegram, when was that placed there?

A. Immediately after my conversation with Mr. Geffner.

Mr. DeLuce: Off the record.

(There was a discussion off the record.)

Mr. DeLuce: Q. Mr. Pais, I show you a document which bears the printing at the top, "News from Cadillac, For Release Immediately," and ask you to examine that. Have you ever seen this document before?

A. Yes, I have.

Q. About when was the first time you saw it? [91]

A. I saw this document right after April 9, 1965.

Q. Is that the printed date that it bears at the end of the page? A. Yes, sir.

Q. Can you describe for us what this is, Mr. Pais?

(Deposition of Joseph G. Pais.)

A. This document is for a news release to the newspapers.

Q. Where was it to be released?

A. It was to be released in Los Angeles.

Q. Is that the date line on the first paragraph?

A. Los Angeles—Los Angeles, that's right.

Q. And this pertained to the closing of the Cadillac retail branch outlets in Los Angeles.

A. That is correct.

Q. When was it released in Los Angeles, if you know?

A. It was released in Los Angeles at noon, April 15, 1965.

Q. Did you have anything to do with the release of this item?

A. I was with Mr. Hopkins when he released this item.

Mr. DeLuce: We would like to have this marked as Respondent General Motors' Exhibit 1 for identification.

(The document referred to was marked by the notary public as Respondent General Motors' Exhibit No. 1 for identification, and is attached hereto.) [92]

Mr. DeLuce: Q. If you know, was there any reason for its being released on April 15, 1965, when it bears the date of April 9, 1965?

A. Yes, we did not want to release this until we had the opportunity of announcing this ourselves—that is, Mr. Hopkins and I—to announce it to the management of the Los Angeles branch, supervisory personnel, the employees, both hourly and salaried.

(Deposition of Joseph G. Pais.)

Q. Since April 15, 1965, have you made any check or determination to see whether this item was printed in any newspapers in the Los Angeles area?

A. Yes, I did.

Q. What is your information in regard to the newspapers in which it appeared, and the approximate dates? Have you made any notation of that?

A. Yes, I did.

Q. Are these the notations that you made?

A. Yes.

Q. What do your notes reflect as to the newspapers and the dates on which this item appeared?

A. This item appeared in the Automotive News, dated April 26. In the Daily News, April the 20th. The Daily Breeze, April 27. The Banning Record and the Beaumont Gazette, April 30. The News, Van Nuys, April the 20th. Los Angeles Herald-Examiner, business report section, April the 16th. Los Angeles Times, April the 25th. And the [93] Ledger, April the 22nd.

Q. Mr. Pais, I show you the paper that was shown to you previously by Mr. Lund, which you testified was the memorandum or note prepared by your secretary after she received a call from Mr. Herbert Ansell, on or about June 29, 1965.

A. Yes.

Q. Did your secretary give this to you after she had prepared it?

A. Yes, she did.

Q. There is some handwriting in the upper right-hand corner. Do you know whose handwriting that is?

A. That is mine.

Q. When was that handwriting placed on this paper?

(Deposition of Joseph G. Pais.)

A. Immediately after my girl gave me this, my secretary gave me this note.

Q. It says "Phoned in to G. Cherpelis." Who is Mr. Cherpelis?

A. Mr. Cherpelis is legal representative of General Motors.

Q. He is with the Legal Department of General Motors? A. Legal Department of General Motors.

Q. There is some handwriting on the right-hand bottom side of the page. Do you know whose handwriting that is? A. That's mine.

Q. When was that handwriting placed on this document, [94] if you know?

A. I questioned my girl as to the—he mentioned—

Q. I just asked you when you placed it on there.

A. Immediately after she handed me this piece of paper.

Mr. DeLuce: May we have this paper marked as Respondent General Motors Exhibit No. 2.

(The document referred to was marked by the notary public as Respondent General Motors' Exhibit No. 2 for identification, and is attached hereto.)

Mr. DeLuce: Q. I show you Respondent Ehlers' Exhibit No. 5 for identification, the minutes of a meeting held August 19, 1957. On the last page, on which you previously identified the signature of Paul French, did Mr. French sign that in your presence?

A. Yes, he did.

Q. Do you recall when he signed it in your presence?

(Deposition of Joseph G. Pais.)

A. That was the first order of business on the next meeting day.

Q. Whatever that meeting day was, is that correct? A. That is correct.

Q. Have you ever met Mr. LaRue Thomas?

A. Yes, I have.

Q. When was the first time you met Mr. Thomas, do you recall? If you cannot place it as to the day, give the approximate time or date. [95]

A. I believe I met Mr. LaRue Thomas the week that, the last week in May, and I believe I met him for the first time either on Tuesday afternoon or—I believe it was Wednesday afternoon, during that week.

Mr. DeLuce: I have no further questions, so I assume this deposition is now closed. Is that correct?

Mr. Lund: I think so, as far as we are concerned.

Mr. Ansell: No questions.

(It was stipulated by and between counsel that the foregoing deposition be signed before any notary public with the same force and effect as though read, corrected and signed in the presence of the notary public before whom it was taken.)

Signature of Witness

(4) OVERTIME

The union proposed time and one-half for hours over 8 and hours over 40, Saturday work time and one-half as such, and double time for Sundays and Holidays.

(5) WAGE RATES

The union stated we would discuss wage rates later.

(6) HOLIDAYS

The union proposed eight (8) paid holidays—namely, New Years, Fourth of July, Memorial Day, Labor Day, Thanksgiving Day, Veterans Day (Nov. 11), Christmas and one religious holiday to be granted to employees requesting same without pay.

Management referred to the G.M. UAW Agreement and proposed seven (7) paid holidays in accordance with said agreement.

(7) VACATIONS

The union proposed that vacations be granted as such that one year seniority employees receive one week—two year employees two weeks—three weeks for five year employees, with pay to be based on yearly earnings divided by 52 weeks, or $1/52$ for 1 year, $2/26$ for 2 years, etc. No explanation was given for 3 weeks. Yearly earning computation is to be for incentive workers only. Non-productive workers will receive pay on basis of rate times hours based on above length of service.

Management stated they would study the proposal.

(8) LEAVES OF ABSENCE

The union stated they would consider the G.M. UAW Agreement on this subject.

(9) DISCHARGES & LAYOFF

The union proposed that a layoff of 60-days break seniority, seniority for purposes of layoff is to be Branch and Sub-Branch wide.

Discharge clause to be subject to grievance procedure.

(10) and (21) SAFETY & SANITARY CONDITIONS, SAFETY COMMITTEE

The union proposed that a clause be written into the contract on Safety and Sanitary Conditions, i.e., that the company will furnish safe equipment, keep the premises in a sanitary condition; also that a joint Union-Management committee be established to periodically inspect the plant relative to safety conditions.

Management explained the policy of Cadillac and G.M. and that safety of their employes was a management responsibility, that the union could operate through the grievance procedure if they felt an unsafe condition existed in the plant.

(11) ALTERATION OF AGREEMENT

The union requests a clause whereby no alteration of the agreement can be made at the local level without International Union approval or approval of Cadillac Motor Car Division, Detroit.

Management referred to the G.M. UAW Agreement.

(12) SENIORITY—DEPARTMENTAL

The union requested that a clause be included into the contract that in case of a layoff and a man was reassigned from one task to another within the same classification, that we stipulate that a reasonable break in period would be given the employee.

Management stated that layoffs are by department, by classification, therefore, they could not see the necessity for such a clause.

(13) GRIEVANCE PROCEDURE

The union indicated they would accept a management proposal on this if it conformed to the G.M. UAW Agreement.

(14) ARBITRATION

The union indicated they would accept a basic procedure as authorized in the G.M. UAW Agreement.

(15) WAGE RE-OPENING

The union requested this be held in abeyance until later in the week.

(16) STRIKE AND LOCKOUT

The union would entertain a proposal by management based on the G.M. UAW Agreement.

(17) PICKET LINES

The union proposed that a clause be written into the contract prohibiting management from taking disciplinary action against an employee who refused to cross a picket line.

Management explained that we have never requested our employees to cross a lawful picket line and that the union could not show any example of such, therefore, management could see no need of such a clause; also, that the discharging of an employee was subject to the grievance machinery.

(18) VISITATIONS

The union proposed a clause whereby the union business agent would have access to the plant at any time.

Management stated their procedure relative to this subject; also that a clause would be proposed which would allow such visitations within certain limitations.

(19) JURY DUTY

The union proposed that an employee, when on jury duty, should be paid at his base rate time 8 hours per day, and that jury pay would be refunded to the company.

Management stated that everyone has a duty to the community to serve on a jury and referred the union to the G.M. UAW Agreement.

(20) SICK LEAVE

The union proposed that six (6) days per year be credited to each employee for the purposes of sick leave, with maximum of accumulated eighteen (18) days. Any days over eighteen (18) would be paid as a bonus to the employee.

Management made no comment on this proposal.

(21) SAFETY COMMITTEE—(See Item #10)

(22) and (23) HEALTH AND WELFARE,
PENSION PLAN

The union requested that we discuss these two items on Wednesday, August 21st, when their insurance and welfare department would make their explanation and proposal.

Management gave the union G.M. Pamphlets on the Pension and Insurance programs.

(24) GENERAL CONDITIONS

The union requested that coveralls be furnished, laundered and paid for by the company, first aid medical kits be made available, and that when an employee is

requested to estimate a job he will be paid at the rate of 20% over his base rate.

Management stated they would study this proposal.

(25) CLAIMS FOR DEFECTIVE WORK

The union proposed the following clause:

"No wage deduction or other charge shall be made against any employee on account of any claim for defective work, unless such work shall have been inspected and rejected by the inspector or foreman before leaving the shop or premises."

Management made no comment.

(26) UNION BULLETIN BOARD

The union stated that the G.M. UAW language might be acceptable.

(27) PREMIUM PAY

The union stated that jobs not flat rated be paid on the basis of 20% above the base rate. The Brougham was cited as an example.

Management made no comment.

(28) ASSIGNMENT OF CONTRACT

The union proposed a clause whereby a final agreement between the parties would be binding on the companies, successors or assignees, etc.

Management stated that this article was not necessary in a contract, inasmuch as the law does not prohibit the union from organizing groups of people on the basis of a sale of a business, etc.

(29) SAVING CLAUSE

The union requested a clause as follows:

"In the event any provision of this agreement shall be held contrary to existing or future Federal or State

laws, the remainder of the agreement shall not be effected thereby."

Management agreed.

(30) and (31) MEETINGS AND UNION
COMMITTEE

This subject will be discussed at the next meeting.

(32) DURATION

The union requested that we give consideration to a one (1) year contract. Management stated they would take the union's proposal under advisement.

Management inquired as to whether it was the union's intention to reclassify the salaried people in the unit to hourly rate.

The union stated that they did not want the salaried group to be on hourly rate.

Management then stated that the union had, in fact, included the salary people in the same bargaining unit and therefore were of the opinion that they could very easily be reclassified.

The union objected.

Management then proposed that a separate contract for salary people be negotiated, explaining that the policies and procedures of G. M. relative to salaried employees differs from hourly rated contracts.

The union stated they would give consideration, to management's proposal.

Management and union agreed to meet again on Tuesday, August 20th at 1:00 P.M.

Meeting adjourned 6:30 P.M.

/s/ PAUL FRENCH

Admitted in Evidence 2-24-66.

GENERAL COUNSEL'S EXHIBIT No. 19-B.

SECOND SPECIAL UNION MANAGEMENT
MEETING AT STATLER HOTEL
LOS ANGELES, CALIFORNIA

1:00 P.M., AUGUST 20, 1957

Present for the Union: Messrs. P. A. French, K. W. Buckley, V. Dickerson, G. Harlan, E. Lee, J. Girardi, E. N. Anderson.

Present for Management: Messrs. M. S. Lester, J. G. Pais, J. L. Dinniene, W. E. Keane.

* * * *

Management opened the meeting by reading the minutes of the meeting of August 19, 1957.

The union accepted the minutes as read, with one exception.

The union stated that Item 9 of the minutes was correct as written, but that the union had intended that the 60-day break in seniority be applied relative to accumulative seniority for Personal Leaves of Absence and not to the layoff procedure.

Management agreed to this change in the minutes, therefore, the above is a correction to Item 9 in the minutes of August 19, 1957.

The union then presented 13 demands having to do with General Conditions (Item 24 of the minutes of August 19, 1957).

Each demand was discussed as follows:

(1) EMPLOYER TO PAY FULL COST OF
UNIFORMS

The union stated that the employees in the unit are currently paying for their own laundry service and that this cost should be assumed by management.

Management stated that where the company does not insist that employes wear specified uniforms, that management will not bear the cost of such. Management has assumed the cost of different types of wearing apparel where management has determined and insisted, as a matter of policy, that certain employees wear such apparel from a safety standpoint.

(2) JANITOR—TO CLEAN UP STALLS AND FLOOR DURING WORKING HOURS.

The union requested that janitor service be made available during working hours to keep stalls and floors clean.

Management stated that they subscribe fully to good housekeeping—good housekeeping is essential and management has acquired the services of an outside contractor to clean the premises every evening. In addition to that, the garage attendants have been assigned certain cleaning duties in a specified area. Apparently the garage attendants have taken this assignment lightly. Management will re-instruct these employees as to their duties.

Management also pointed out that the employes themselves have a responsibility in maintaining good housekeeping. Certain employes become careless and throw paper bags, cigarette butts, pop bottles and other debris on the floor in their work area, creating an unsightly condition. Management is requesting the cooperation of all of their employees in helping keep Cadillac a clean place to work.

(3) SPECIAL TOOLS—TO BE MADE AVAILABLE WHERE NEEDED.

The union stated that special tools have not been made available to the extent that a man loses time

going from one floor to another or into different areas in an attempt to find a single purpose tool, of which there is possibly only one.

Management explained the problems they have had with their sources of supply on special tools, but that this condition has improved and that management will make every effort to obtain special tools in order that this problem be eliminated.

(4) COMPANY EQUIPMENT TO BE KEPT UP-TO-DATE AND REPAIRED.

Management stated that equipment will be kept in repair and up-to-date where practicable.

(5) STOCK ROOM MUST BE OPEN DURING WORKING HOURS.

Management stated that the stock room is open during working hours and no change is contemplated.

The union agreed that this condition has been corrected.

(6) JOB OPENINGS SHALL BE POSTED FOR AT LEAST TWO WEEKS.

Management referred the union to the G.M. UAW Agreement, Paragraph 63B, and will consider writing such language into a contract for this unit.

(7) ONLY MEMBERS OF BARGAINING UNIT TO DO CUSTOMER LABOR WORK.

Management stated that they will not assign work performed in this bargaining unit to other employees of Cadillac not in the unit.

(8) NO JOBS PERFORMED WITHOUT A
TICKET

Management explained a new procedure which will go into effect in the very near future, where a ticket will be issued on each job or series of operations. Also, that tickets will be time stamped on assignment and stamped again on completion.

(9) EACH FLOOR OR DIVISION SHALL HAVE
CLERICAL HELP, TO REQUISITION
PARTS.

The union commented that this condition has been corrected.

(10) JOBS NOT LISTED UNDER FLAT RATE
SHALL BE PREMIUM PAY UNTIL FLAT
RATE IS ESTABLISHED.

Management will consider.

(11) UNION MAY REQUEST RE-STUDY OF
ALL JOBS WHEN TIME HAS BEEN
CHANGED.

Management stated they will consider and submit a proposal.

(12) PARKING FACILITIES TO BE MADE
AVAILABLE TO ALL EMPLOYEES.

Additional facilities are being made available. Cadillac is not in the parking space business, however, past practice will be continued as a matter of policy.

(13) NO ONE WILL LOSE ANYTHING FROM
SIGNING OF CONTRACT.

Management stated that unless an employee abuses the privileges extended, they would not be removed.

* * * *

Management then reviewed the proposed contract language on the following subjects:

Recognition, Purpose, Interference, Coercion, Managerial functions, Representation, Eligibility of Representatives, Representation Rules, Non-Employee Local Union Officers, Dues Deduction and Union Security, Grievance Procedure, Umpire, Expenses, Powers of the Umpire, Strikes or Stoppages and Lockouts, Disciplinary Cases, Seniority Transfers, Breaking Seniority, Layoffs, Leaves of Absence, Hours, Assignment of Work, Overtime Premium Pay, Holiday Pay, Committee Pay, Bulletin Boards, Jury Duty.

Management also proposed a vacation pay plan based on the following—Percentages are related to gross pay for the eligibility year:

2%—1 to 3 years

3%—3 to 5 years

4½%—5 to 10 years

5¼%—10 to 15 years

6%—15 or more years

The union stated they would study all of management's proposal and discuss same at the next meeting.

It was agreed that the next meeting will be held on August 21, 1957 at 9:30 A.M. at the same location.

Meeting adjourned 5:55 P.M.

* * * *

/s/ PAUL A. FRENCH

Admitted in Evidence 2-24-66.

GENERAL COUNSEL'S EXHIBIT No. 19-C.

AGREEMENT made and entered into this 17th day of October, 1957, by and between the CADILLAC MOTOR CAR DIVISION OF GENERAL MOTORS CORPORATION, a Delaware Corporation having service stations located at 1076 W. 7th Street, and 5151 Wilshire Boulevard, City of Los Angeles, State of California, party of the first part, hereinafter designated as the "Company" and the INTERNATIONAL ASSOCIATION OF MACHINISTS DISTRICT LODGE #94, LOCAL #1186, A.F.L., C.I.O., party of the second part, hereinafter designated as the "Union".

WITNESSETH:

ARTICLE I

RECOGNITION

Sec. 1. The Company hereby recognizes the Union as exclusive representative of certain employees as hereinafter set forth, in the Company's service stations located at 1076 W. 7th Street, and 5151 Wilshire Boulevard, City of Los Angeles, State of California:

Mechanics, Polishers, Washers, Lubricators, Painters, Garage Attendants, Body and Fender men, Machinists, Elevator Operators, Trimmers, and Maintenance Men, but EXCLUDING Branch Manager, Assistant Branch Manager, Sales Manager, Used Car Manager, Service Manager, Assistant Service Manager, Parts Manager, Assistant Parts Manager, General Foremen, Foremen, Assistant Foremen, Inspectors, Timekeepers, Shop Clerks, Parts Clerks, Service Salesmen, Office Clerical Employees, New & Used Car Salesmen, Tower

Operator, Pick-up Drivers-Parts, Pick-up & Delivery Men, Guards, Operating Engineers, Supervisors, Clerical Employes, G. M. Tech Students, and Work Dispatchers;

for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment, subject to and in accordance with the provisions of the National Labor Relations Act, and applicable orders of the National Labor Relations Board.

PURPOSE

Sec. 2. The purpose of the Agreement is to provide orderly collective bargaining relations between the Company and the Union, to secure a prompt and fair disposition of grievances, to eliminate interruptions of work and interferences with the efficient operation of the Company's business.

INTERFERENCE

Sec. 3. The Company will not interfere with, restrain or coerce employes because of membership or lawful activity in the Union, nor will it by discrimination in respect to hire, tenure of employment or any term or conditions of employment, attempt to discourage membership in the Union.

COERCION

Sec. 4. The Union agrees that neither the Union nor its members will intimidate or coerce any employe in respect to his right to work or in respect to Union activity or membership, and further that there shall be no solicitation of employes for Union membership or dues on Company time. The union further agrees that the

Company shall take disciplinary action for any violations of this provision.

MANAGERIAL FUNCTIONS

Sec. 5. The right to hire, promote, discharge or discipline for cause, and transfer and relieve employees from duty because of inefficiency or lack of work, and to maintain efficiency and discipline of employees is the sole responsibility of the Company except that Union members shall not be discriminated against as such with the right of appeal through the grievance procedure.

ARTICLE II

REPRESENTATION

Sec. 1. There shall be three (3) committeemen and one (1) alternate committeeman designated by the employees covered by the Agreement, at 1076 W. 7th Street, and one (1) committeeman and one (1) alternate designated by the employees covered by this Agreement at 5151 Wilshire Boulevard, to represent them and to take up grievances with the Company. These committeemen shall constitute the Shop Committee. The alternate is to serve only in the absence of a Committeeman.

Each member of the shop committee shall have a definitely defined area as may be agreed upon between the Shop Committee and the Plant Management. Where the Chairman of the Shop Committee is elected at large, the entire plant shall constitute his zone.

ELIGIBILITY OF REPRESENTATIVES

Sec. 2. No one shall be eligible to serve as a Committeeman unless he is an employee covered by this Agreement and until his name has been placed on the seniority list and he is working in the service station.

Sec. 3. Any member of the Shop Committee (promoted to a supervisory position or transferred outside the bargaining unit) shall resign from the Committee, and an eligible employe shall be elected to fill his place.

REPRESENTATION RULES

Sec. 4. Committeemen shall be permitted to leave their work after reporting to their respective foremen and recording their time, for the purpose of adjusting grievances in accordance with the Grievance Procedure. A committeeman will be permitted to leave his work during his regular working hours on his shift when he presents a written grievance to his foreman signed by the employe who made the complaint.

Sec. 5. Except as provided in Article VII, Section 11, Committeemen will work at their regular work during the first hour of their respective shifts. Committeemen shall enter and remain in the service station only on their respective shifts unless otherwise agreed to by Management.

Sec. 6. Upon entering a department other than his own in fulfillment of his duties, the Committeeman shall notify the foreman of that department of his presence and purpose if he has been sent for, or give the foreman a copy of the written complaint.

Sec. 7. For the purpose of representation in handling grievances as provided herein, committeemen will be retained at work, regardless of seniority, as long as there is work they can do on a job that is operating, and shall be paid the current rate of pay for such work.

Sec. 8. The Company shall not be required to call the committeeman earlier than the regular starting time of his shift because some employes start work earlier than

his starting time, nor give overtime when some employees start or quit later than his job.

Sec. 9. When on leave of absence, no employee shall serve as a committeeman.

Sec. 10. Committeemen shall be governed by the rules regarding employees entering and leaving the service station. However, members of the Shop Committee may leave the service station when arrangements are made with the Management by an officer of the local Union or Chairman of the Shop Committee.

Sec. 11. The names of the committeemen shall be given in writing to the Management. No committeeman shall function as such until the Management has been advised of his selection, in writing, by the officers of the local Union. Any changes in committeemen shall be promptly reported to the Management in writing.

NON-EMPLOYEE LOCAL UNION OFFICERS

Sec. 12. Officers of the local Union, if not employed by the Company, will be permitted to attend meetings between the Shop Committee and the Branch Manager, or his representative, upon written request of a Shop Committeeman given to the Branch Manager at least twenty-four hours before each meeting. The Branch Manager or his representative shall not be requested to meet with more than two such Union representatives. Such Union representative of representatives must be prepared to show proper credentials.

ARTICLE III

DUES DEDUCTION

Sec. 1. During the life of the Agreement, the Company agrees to deduct Union dues levied by the International or Local Union in accordance with the constitution and by-laws of the Union, from the pay of each employe who executes or has executed the following "authorization for Check-Off Dues" form; provided, however, that the Corporation will continue to deduct monthly membership dues from the pay of each employe for whom it has on file an unrevoked "Authorization for Check-off of Dues" form.

"To Cadillac Motor Car Division

Date.....

"I hereby assign to District Lodge #94, Local #1186, AFL-CIO, International Association of Machinists, from any wages earned to to be earned by me as your employe (in my present or in any future employment by you), such sums as the Financial Officer and said Local Union No. 1186 may certify as due and owing from me as membership dues, including an initiation or reinstatement fee and monthly dues in such sum as may be established from time to time by said local union in accordance with the Constitution of the International Union, AFL-CIO, but not less than \$4.00 monthly. I authorize and direct you to deduct such amounts from my pay and to remit same to the Union at such times and in such manner as may be agreed upon between you and the Union at any time while this authorization is in effect.

"This assignment, authorization and direction shall be irrevocable for the period of one (1) year from the date

of delivery hereof to you, or until the termination of the collective agreement between the Company and the Union which is in force at the time of delivery of this authorization, whichever occurs sooner; and I agree and direct that this assignment, authorization and direction shall be automatically renewed, and shall be irrevocable for successive periods for one (1) year each or for the period of each succeeding applicable collective agreement between the Company and the Union, whichever shall be shorter, unless written notice is given by me to the Company and the Union not more than twenty (20) days and not less than ten (10) days prior to the expiration of each period of one (1) year, or of each applicable collective agreement between the Company and the Union whichever occurs sooner.

"This authorization is made pursuant to the provisions of Section 302(c) of the Labor Management Relations Act of 1947 and otherwise.

(Signature of Employee Here)

(Address of Employee)

(Type or print name of Employee here)

(City)

(State)

(Date of Signing)

(Employee's Clock No.)

(Date of Delivery to Employer")

Sec. 2. A properly executed copy of such Authorization for Check-Off of Dues form for each employe for whom Union membership dues are to be deducted hereunder, shall be delivered to the Local Management before any payroll deductions are made, except as to employes whose authorization have heretofore been delivered. Deductions shall be made thereafter, only under Authorization for Check-Off of Dues forms which have been properly executed and are in effect. Any authorization for Check-Off of Dues which is incomplete or in error will be returned to the Local Union by the Local Management.

Sec. 3. Check-Off deductions under all properly executed Authorizations for Check-Off of Dues forms which have been delivered to the respective Local Managements on or before the effective date of this Agreement, shall begin with the month of December, 1957.

Sec. 4. Thereafter, on or before the fifteenth (15th) day of each month the Union shall deliver to the Company any executed Authorization for Check-Off of Dues forms under which Union membership dues are to be deducted beginning with the following calendar month. After receipt of the Authorization for Check-Off of Dues form, the Union membership dues for each succeeding calendar month shall be deducted from the employe's first pay received in that month in which the employe has sufficient net earnings to cover the Union membership dues. In the event that membership dues, other than those for the calendar month in which the deduction is made and initiation fees have become due and owing by an employe subsequent to the effective date of said employe's Authorization for Check-Off of

Dues form, but prior to the first deduction by the Corporation thereunder, such membership dues and initiation fees will be deducted by the Corporation at the time it makes the first deduction for membership dues. The Union will notify the Company in writing, when it makes delivery of Authorization for Check-Off of Dues forms prior to the 15th of each month, of the amounts owing by employees who executed these forms.

Sec. 5. In the case of employees rehired, or returning to work after layoff or leave of absence, or being transferred back into the bargaining unit, who previously have properly executed Authorization for Check-Off of Dues forms, deductions will be made for membership dues as provided herein.

Sec. 6. In cases where a deduction is made which duplicates a payment already made to the Union by an employee, or where a deduction is not in conformity with the provisions of the Union Constitution and By-Laws, refunds to the employee will be made by the Local Union.

Sec. 7. Deductions for any calendar month shall be remitted to the designated financial officer of the Local Union not later than the twentieth-fifth (25th) day of the following month. The Company shall furnish the designated financial officer of the local Union monthly with a list of those for whom deductions have been made, and the amount of such deductions.

Sec. 8. Any temporary employee whose employment is terminated, or any employee who is transferred to a classification not in the bargaining unit, or any employee whose seniority is broken by death, quit, discharge, layoff, or sick leave of absence shall cease to be subject to check-off deductions beginning in the month im-

mediately following the month in which such termination or transfer occurred or seniority was thus broken. The Company will notify the Union, following the end of each month, of the names of such employes and will designate the reason each such employe ceased to be subject to the check-off.

Sec. 9. The Company shall not be liable to the International Union or its Locals by reason of the requirements of this Section of the agreement for the remittance or payment of any sum other than that constituting actual deductions made from employe wages earned.

Sec. 10. An employe who is a member of the Union at the time this Agreement becomes effective shall continue membership in the Union for the duration of this Agreement to the extent of paying an initiation free and the membership dues uniformly required as a condition of acquiring or retaining membership in the Union.

Sec. 11. An employe who is not a member of the Union at the time this Agreement becomes effective shall become a member of the Union within 60 days after the thirtieth (30th) day following the effective date of this Agreement or within sixty (60) days after the thirtieth (30th) day following employment, whichever is later, and shall remain a member of the Union, to the extent of paying an initiation fee and the membership dues uniformly required as a condition of acquiring or retaining membership in the Union, whenever employed under, and for the duration of, this Agreement.

Sec. 12. The Union shall accept into membership each employe covered by this Agreement who tenders to the

Union the periodic dues and initiation fee uniformly required as a condition of acquiring or retaining membership in the Union.

Sec. 13. It is mutually understood that any provision of Article III, Sections 1 through 9, of this Agreement, including the provisions of any Agreement made a part of Article III, Sections 1 through 9 inclusive, which is or may be in conflict with any Federal or State Law shall be ineffective to the extent of such conflict, and shall be effective only if and when effective in accordance and consistent with requirement of Federal and State Law.

ARTICLE IV

GRIEVANCE PROCEDURE

Sec. 1. Should differences arise between the Company and the employes, there shall be no suspension of work, but an earnest effort shall be made to settle such differences immediately in the following manner.

FIRST STEP

- (a) Any employe having a grievance, or one designated member of a group having a grievance, shall first take the grievance up with the foreman who will attempt to adjust it.

Any employe may request the foreman to call the committeeman for that district to handle a specified grievance with the foreman. The foreman will send for the committeeman without further discussion of the grievance.

SECOND STEP

- (b) If the grievance is not adjusted by the foreman, it shall be reduced to writing (if this has not

mediately following the month in which such termination or transfer occurred or seniority was thus broken. The Company will notify the Union, following the end of each month, of the names of such employes and will designate the reason each such employe ceased to be subject to the check-off.

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SECOND STEP

- (b) If the grievance is not adjusted by the foreman, it shall be reduced to writing (if this has not

already been done) on forms provided by the Company, and signed by the employe involved, and one copy shall be given to the foreman.

The committeeman, with or without another committeeman, may then take the grievance up with the Department Manager, who will attempt to adjust it.

THIRD STEP

- (c) If the grievance is not adjusted at this point, the committeeman handling the grievance shall refer it to the Chairman of the Shop Committee who may designate himself or one other member of the committee to investigate the grievance. The Shop Committee as such may then take the grievance up with the General Service Manager.
- (d) If the grievance is not satisfactorily settled at this Step, the Shop Committee may appeal to the Branch Manager whose decision shall constitute decision of the highest Local Management.

DECISIONS

Sec. 2. A final decision on appealed grievances will be given by representatives of the highest Local Management as soon as reasonably possible but in any event within a maximum of twenty (20) working days from the date of first written filing thereof. Any grievance not appealed from a decision at one step of this procedure in the service station to the next step within five working days of such decision, shall be considered settled on the basis of the last decision, and not subject to further appeal.

Sec. 3. Written answers will be given by the Management to all written grievances presented by the Shop Committee.

UMPIRE

Sec. 4. If the matter is not settled by the Branch Manager, then the case shall be referred to an impartial umpire satisfactory to and selected by both parties. Notice of intention to appeal a case to an impartial umpire must be filed by the party making the appeal within thirty (30) days after written decision by the Branch Manager or his representative.

EXPENSES

Sec. 5. The fees and expenses of the umpire shall be paid one-half by the Company and one-half by the Union, and all other expenses shall be borne by the party incurring them. All cases shall be presented to the umpire in the form of a written brief prepared by each party, setting forth the facts and its position and the arguments in support thereof. The umpire may make such investigation as he may deem proper and may at his option hold a public hearing and examine the witness of each party and each party shall have the right to cross-examine the witnesses and to make a record of all such proceedings.

POWERS OF THE UMPIRE

Sec. 6. It shall be the function of the umpire, after due investigation and within thirty (30) days after submission of the case to him, to make the decision in all claims of discrimination for Union activity or membership, and in all cases of alleged violation of the terms of this Agreement or supplements thereto in regard to recognition, representation, grievance procedure, sen-

iority, disciplinary lay-off and discharge, working hours, leaves of absence, union bulletin boards, strikes and stoppages, vacation pay, holiday pay, Article IX, Sections 2, 3, 4, and 5; and any alleged violations of written local or national wage agreements. The Umpire shall have no power to add to or subtract from or modify any of the terms of this Agreement or any agreements made supplementary hereto, nor to establish or change any wage or any other section or paragraph of this Agreement not above enumerated, but shall refer any such case back to the parties without decision. The Umpire shall have no power to rule on any issue or dispute arising under the Pension, Insurance Section, Income Security Plan, or the Waiver Section.

Sec. 7. In disciplinary lay-off and discharge cases the umpire shall have the power only to adjudge the guilt or innocence of the employe involved. If the umpire shall adjudge the employe innocent of the offense for which he was disciplined or discharged, the Company will reinstate the employe in full with accumulated seniority and in case the employe was penalized by loss of working time, will pay him back wages less any unemployment or other compensation from any source which he may have received during the period of his separation from the payroll of the Company, provided, however, that if the employe is again laid off or discharged in the course of the same calendar year and his state unemployment benefits are curtailed because of his prior receipt of state unemployment benefits during the aforesaid layoff or discharge, the Company will pay to the employe the difference between the amount which he actually receives from the State during the subsequent layoff or discharge and the amount which

he would have received if the prior disciplinary layoff or discharge had not occurred. If the umpire shall adjudge the employe guilty of the offense for which he was disciplined or discharged, the Company shall not be requested by the umpire or the Union to modify the penalty imposed by the Company. After a case on which the umpire is empowered to rule hereunder has been referred to him, it may not be withdrawn by either party except by mutual consent.

Sec. 8. No claims including claims for back wages, by an employe covered by this Agreement, or by the Union, against the Company shall be valid for a period prior to the date the grievance was first filed in writing, unless the circumstances of the case made it impossible for the employe, or for the Union as the case may be, to know what he, or the Union, had grounds for such a claim prior to that date, in which case the claim shall be limited retroactively to a period of thirty (30) days prior to the date the claim was first filed in writing.

Sec. 9. All claims for back wages shall be limited to the amount of wages the employe would otherwise have earned from his employment with the Corporation during the periods as above defined, less the following:

1. Any Unemployment Compensation which the employe is not obligated to repay or which he is obligated to repay but has not repaid nor authorized the Corporation to repay on his behalf.

2. Compensation for personal services other than the amount of compensation he was receiving from any other employment which he had at the time he last worked for the Corporation and which he would

have continued to receive had he continued to work for the Corporation during the period covered by the Claim. Sec. 10. No decision of the umpire or of the Management in one case shall create a basis for a retroactive adjustment in any other case prior to the date of written filing of each such specific claim.

Sec. 11. There shall be no appeal from the Umpire's decision, which will be final and binding on the Union and its members, and the employe or employes involved and the Company. The Union will discourage any attempt of its members and will not encourage or cooperate with any of its members in any appeal to any court or Labor Board, from a decision of the umpire.

STRIKES OR STOPPAGES AND LOCKOUTS

Sec. 12. During the life of this agreement, the Union will not cause or permit its members to cause, nor will any member of the Union take part in any sit-down, stay-in, or slow-down, or any curtailment of work or restriction of production or interference with the business of the Company. The Union will not cause or permit its members to cause nor will any member of the Union take part in any strike or stoppage or any of the Company's operations, or picket any of the Company's premises until all the bargaining procedure as outlined in this agreement has been exhausted, and in no case on which the umpire shall have ruled, and in no case on which the umpire is not empowered to rule until after negotiations have continued for at least five (5) days with the Branch Manager of the Los Angeles Branch, or his designated representative, and not even then unless authorized by the International Association of Machinists, District Lodge #94, Local #1186, AFL-CIO, and written notice of such inten-

tion to authorize has been delivered to the General Manager of the Cadillac Motor Car Division, Los Angeles Branch by Local #1186 at least five (5) days prior to such authorization. The Union will not cause or permit its members to cause, nor will any member of the Union take part in any strike or stoppage of any of the Company's operations or picket any of the Company's plants or premises because of any dispute or issue arising out of or based upon the provisions of the Pension Plan, Insurance Program, or the Income Security Plan, nor will the Union authorize such a strike, stoppage, or picketing.

In case a strike or stoppage of production shall occur, the Company has the option of cancelling the Agreement at any time between the tenth (10th) day after the strike occurs and the day of its settlement. During the life of this Agreement, the Company will not lock-out any employee.

Sec. 13. The Company reserves the right to discipline any employee taking part in any violation of this section of the Agreement. It is the duty of the employee to familiarize himself with the shop rules.

DISCIPLINARY CASES

Sec. 14. Any employee who has been disciplined by a layoff or a discharge may request the presence of his committeemen to discuss the case within an office designated by the Management, before he is required to leave the service station. The committeeman will be called promptly.

Sec. 15. Any employee who is removed from his work and taken to an office for interview may, if he so desires, call the committeeman for his district to be pres-

ent with him during such interview. The committeeman, however, will be present only as a witness for the employe, and may negotiate on the matter only after employe has a grievance as a result of the interview.

Sec. 16. It is important that complaints regarding unjust or disciplinary layoffs or discharges be handled promptly according to the grievance procedure. Grievances must be filed within three working days of the layoff or discharge and the Management will review and render a decision on the case within five (5) working days of its receipt. If a decision of the local Management in such case is not appealed by the Shop Committee within five working days, the matter will be considered closed.

Sec. 17. Upon execution of this agreement, it is understood and agreed that any and all complaints and grievances of every kind and nature are hereby acknowledged to have been satisfactorily adjusted and are not subject to further discussion or appeal.

ARTICLE V—SENIORITY

SENIORITY—HOW ACQUIRED

Sec. 1. Seniority shall be by occupational classification. Employes shall be regarded as temporary employes until they have acquired seniority. Employes may acquire seniority by working ninety (90) days during a period of six (6) months in which event, the employe's seniority will date back ninety (90) days from the date seniority is acquired. This provision shall apply retroactively to all temporary employes who have been laid off on or after the effective date of this Agreement.

There shall be no responsibility for the reemployment of temporary employees if they are discharged or laid off during this period.

TRANSFERS BETWEEN OCCUPATIONAL CLASSIFICATIONS

Sec. 2. When an employee is transferred from one occupational classification to another for any reason, there shall be no loss of seniority. However, the employee's seniority will not be transferred to another classification until he has worked therein for sixty (60) consecutive days. In the event there should be a decrease in work necessitating a layoff in the classification to which an employee has been transferred prior to his obtaining seniority in the new classification, he shall be transferred back to the occupational classification from which he was originally transferred.

No questions of seniority rights will be considered in any case of temporary transfers of employees to relieve temporary work peaks for less than one week.

SENIORITY LISTS

Sec. 3. Up-to-date seniority lists shall be made available to all employees for their inspection within the plants either by posting where practical or by a satisfactory equivalent method.

TRANSFERS

Sec. 4. The transferring of employees is the sole responsibility of the Management. In the advancement of employees to higher paid jobs when ability, merit, and capacity are equal, employees with the longest seniority will be given preference. Any claims of personal prejudice or any claims of discrimination of Union activ-

ity in connection with transfers may be taken up as grievances. Such claims must be supported by written evidence submitted within 48 hours from the time the grievance is filed.

It is the policy of Management to cooperate in every practical way with employes who desire transfers to new positions or vacancies in other wage classifications paying an equal rate to or below their present wage classification in their department. Accordingly, such employes who make application to their foreman stating their desire, qualifications, and experience, will be given preference for openings in their department provided they are capable of doing the job.

However, employes who have made application as provided for above and who are capable of doing the job available, shall be given preference for the openings in their department over new hires. In case the opening is an equal or lower rated classification and there is more than one applicant capable of doing the job, the applicant with the longest seniority will be given preference. Any secondary job openings resulting from filling jobs pursuant to this provision may be filled through promotion, or through transfer without regard to seniority standing, or by new hire.

BREAKING SENIORITY

Sec. 5. Seniority shall be broken for the following reasons:

- (a) If the employe quits.
- (b) If the employe is discharged.
- (c) If the employe is absent for three consecutive working days without properly notifying the Management, unless a satisfactory reason is given for not reporting such absence.

- (d) If the employe fails to return to work within five working days after being notified to report for work and does not give a satisfactory reason. Notification will be by registered mail to the last known address on file with the Service Manager.
- (e) If he is laid off for a continuous period until equal to the seniority he had acquired at the time of such layoff period.
- (f) Retirement as follows:
 - (1) An employe who retires, or who is automatically retired under the terms of the Pension Plan, shall cease to be an employe and shall have his seniority cancelled.
 - (2) An employe who has been retired on a total and permanent disability pension and who thereby has broken his seniority in accordance with subsection (1) above, but who recovered and is subsequently reemployed shall have his seniority reinstated as though he had been continued on a sick leave of absence during the period of his disability retirement.
 - (3) If an employe retired for reasons other than total and permanent disability, who has lost seniority in accordance with subsection (1) above, is rehired such employe will have the status of a new employe and without seniority, and he shall not acquire or accumulate any seniority thereafter, except for the purpose of applying the provisions governing Holiday and Vacation Pay.

(g) Age:

Management may terminate the employment of any employe upon or after the first day of the month following the month in which such employe reaches his 68th birthday. Any such termination shall cancel the employe's seniority.

LAYOFFS

Sec. 6. In a reduction of the working force in any department or classification, employes with less seniority will be laid off before employes with longer seniority list.

When it becomes necessary to reduce the working force for reasons which Management believe to be temporary in nature, such layoff shall be by classification in the branch or department affected.

For the purpose of layoff and recall the seniority of employes covered by this Agreement shall be considered non-interchangeable with other employes in other locations covered by this Agreement.

After a layoff of thirty (30) continuous days, the employe's seniority in his classification shall become effective at both locations, and the employe with the least seniority working at either location in the same classification covered by the Agreement will be laid off and displaced by the employe with the greater seniority.

In increasing the working force, former employes with seniority will be recalled in the reverse order in which they were laid off. No new employes will be hired in any occupational classification until all former

employees with seniority capable of doing the work in that classification have been rehired.

Nothing herein shall restrict the Company's right to hire additional employees when in its opinion the regular force is not able to handle the volume of business without overtime.

Temporary employees shall be laid off when in the opinion of the Company the regular force is able to handle the volume of business without overtime.

Sec. 7. The Management will, wherever possible, give at last twenty-four hours' notice prior to lay-off to the employees affected.

LAYOFFS

Sec. 8. Any employee who has been incapacitated at his regular work by injury or compensable occupational disease while employed by the Company, may be employed on other work in the service station which he can do without regard to any seniority provisions of the Agreement, except that such employee may not displace an employee with longer seniority.

Sec. 9. To protect his seniority, it is the employee's responsibility to keep the Management informed of his proper home address. The method of notification of change of address is to be in writing to the Service Manager.

Sec. 10. The employment of the following persons shall not be governed by seniority rules; Students, and graduates of technical or professional schools and special employees receiving training as part of a formal training program.

ARTICLE VI

LEAVES OF ABSENCE

Sec. 1. Informal Leave. A leave of absence may be granted for personal reasons for a period not to exceed thirty (30) days, upon application of the employee to and approval by his foreman. Such leaves of absence shall not be renewed and seniority will accumulate during the leave.

Sec. 2. Formal Leave for Personal Reasons. Employees requesting formal leave of absence shall first make application in writing to their foreman on the form provided. Such leave of absence will be granted to an employee for not more than ninety (90) days on approval of the Management when the services of the employee are not immediately required and there are employees available in the service station capable of doing his work.

Such leaves of absence may be extended but the approval of the Branch Service Manager is required in such cases. Seniority will not accumulate during the period of formal leave of absence for personal reasons. Such formal leave of absence will not be granted an employee who is laid off, and will not be extended if the employee would have been laid off had he been working during his leave.

Sec. 3. Sick Leave. Any employee who is known to be ill, supported by satisfactory evidence, will be granted sick leave automatically for not to exceed ninety (90) days. If the sickness continues beyond ninety (90) days, sick leave shall be extended on approval of the Branch Manager or his designated representative.

Seniority of such employes shall accumulate during sick leave and shall be broken, figured from the date the sick leave stated, on the same basis as provided in Section 5 (e) of Article V for laid off employes breaking seniority.

Temporary employes without seniority shall not receive credit for time off sick toward the ninety (90) days of employment required to acquire seniority, and in no case shall a temporary employe's name be placed on the seniority list while away from work on sick leave.

In compensable injury and legal occupational disease cases, sick leaves will be granted automatically and seniority will accumulate for the full period of legal temporary disability, unless the employe has been kept at work on a job he can do as provided in Sec. 8, Article V above.

Sec. 4. Leave of Absence for Union Activity. Any employe elected to a permanent office in, or as a delegate to, any labor activity necessitating a leave of absence, shall be granted such leave not to exceed one year, and shall at the end of the term in the first instance, or at the end of the mission in the second instance, be guaranteed reemployment if there is sufficient work for which he is in line at the then current rate of pay. Seniority will accumulate during the period of such leaves.

Leaves of absence may be granted to employes for other Union activities and seniority shall accumulate during such leaves. Such leaves will be granted only when requests are made in writing to the Manager of the Branch in Los Angeles by the President of the Union or the Regional Director for the area in which the service station is located.

Sec. 5. Leave of Absence for Elective Public Office. Any employe with seniority elected to public office may make written application for a leave of absence for the period of his first term of active service in such elective office. Additional leaves of absence for service in elective public office may be granted at the option of local management upon written application by the employe. Any employe granted such leave of absence shall be guaranteed reemployment, at the then current rate of pay, if there is sufficient work available which he is capable of doing and to which he may be entitled on the basis of seniority. Seniority will accumulate during the period of such leaves.

All the above leaves of absence, including sick leaves, are granted subject to the following conditions:

- (a) The return of an employe to work before the expiration of his leave of absence is at the option of the Management.
- (b) Any employe who fails to report for work within three working days after the date of expiration of the leave, shall be considered as having voluntarily quit, unless he has a satisfactory reason.
- (c) If, upon the expiration of a leave of absence, there is no work available for the employe in line with his seniority, or if the employe would otherwise have been subject to layoff according to seniority during the period of the leave, the period which breaks seniority shall start from the date of expiration of the leave.

Sec. 6. Leave of Absence for Military Service. Any employe who enters into active service in the armed forces of the United States, as defined below, will be

given a leave of absence for such period. Seniority will accumulate during such period of service. Upon the termination of such service the employee shall be offered reemployment in his previous position or a position of like seniority, status and pay, unless the circumstances have so changed as to make it impossible or unreasonable to do so, in which event he will be offered such employment in line with his seniority as may be available which he is capable of doing at the current rate of pay for such work, provided he meets the following requirements:

- (1) Has not been dishonorably discharged.
- (2) Is physically able to do the work.
- (3) Reports for work within ninety days of the date of such discharge, or ninety days after hospitalization continuing after discharge for not more than one year.

As used in this Section, "active service in the armed forces of the United States" is defined as and limited to:

Volunteering or being called into service as a member of the Army, Air Forces, Navy, or Marine Corps, provided that in time of peace such service, for the purposes of this Agreement and any military leave of absence issued pursuant to the terms thereof, shall not exceed one year.

Sec. 7. Educational Leave of Absence for Veterans.

Employee veterans who have acquired seniority and who desire to further their education under the provisions

of applicable federal laws, may make application for a leave of absence for that purpose.

One continuous leave of absence for such education will be granted to eligible employees for a period not to exceed twelve months, subject to the conditions set forth in Article VI, Sec. 5 (a), (b), and (c) of this Agreement. Additional leaves of absence may be granted, at the option of Local Management. Seniority shall accumulate during such leaves of absence.

Sec. 8. Leaves of Absence for Service in General Motors Defense Plants.

Any employe whose services, because of conditions made necessary by the National Defense of the United States, are needed by the Management in a plant of the Corporation other than the plant in which he has established his seniority and who accepts such employment, will be given a leave of absence from the plant in which he has seniority for the period his services may be required in such other plant and shall accumulate seniority in the plant from which he has been given a leave of absence, during the full period of such leave. If the employe desires to return to employment in the original plant or when the Management of the defense plant no longer requires his services, the employe may return to the original plant in which he has seniority, in accordance with his seniority status, to his former or a similar job.

Sec. 9. An approved copy of all leaves of absence will be furnished to the employe.

ARTICLE VII

WORKING HOURS AND WAGES FOR THE PURPOSE OF COMPUTING OVERTIME- PREMIUM PAY

HOURS

Sec. 1. For the purpose of this section on working hours the employe's working week shall be the calendar week, beginning on Monday at the regular starting time of the shift to which he is assigned.

Sec. 2. For the purpose of computing overtime premium pay, the regular working day is eight hours. Employes shall be compensated on the basis of the calendar day (midnight to midnight) on which their shift starts working, for the regular working hours of that shift.

ASSIGNMENT OF WORK

Sec. 3. All work shall be distributed in rotation as the jobs come up, among all qualified employes in the same occupational classifications, and there shall be no discrimination on the division of work among employes of the same occupational classification other than that based upon qualification.

CALL-IN PAY

Sec. 4. Any employe called to work or permitted to come to work without having been properly notified that there will be no work, shall receive a minimum of four hours' pay at the regular hourly rate, except in cases of labor disputes, or other conditions beyond the control of the Local Management.

COMPENSATION STRAIGHT TIME

Sec. 5. (a) For the first eight hours worked in any continuous twenty-four hour period, beginning with the starting time of the employe's shift.

Sec. 5. (b) For time worked during the regular working hours of any shift which starts on the day before and continues into a specified holiday, Saturday, or Sunday.

TIME AND ONE-HALF

Sec. 6. (a) For time worked in excess of eight hours in any continuous twenty-four hours, beginning with the starting time of the employe's shift, except if such time is worked on a Sunday or holiday when double time will be paid as provided below: 1. For time worked on any shift which starts on Saturday.

DOUBLE TIME

Sec. 7. For time worked during the regular working hours of any shifts that start on Sundays, and the following legal holidays: New Year's Day, Fourth of July, Labor Day, Thanksgiving, Christmas and Memorial Day, and any time worked in excess of eight hours on a shift which starts the previous day and runs over into such Sunday or Holiday.

For all time worked on Sundays and the following legal holidays: New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving, and Christmas by employes whose occupational classifications are not regularly scheduled to work on these days.

For time worked in excess of four hours (at straight time on Monday through Friday or at time and one-

half on Saturday) on a shift which starts on December 24, or on December 31.

EXCEPTIONS TO ABOVE OVERTIME PAYMENT

Sec. 8. (a) Time and one-half shall not be payable under the provisions of Section 6(a) (Time and One-Half) on December 24, or on December 31, by reason of advancing the regular shift starting time of second (afternoon) or third (night) shift employees on such days, except if and then only to the extent that such advancement exceeds four hours for second shift employees or eight hours for third shift employees respectively, plus the shift gaps and lunch periods.

(b) Employees working in necessary continuous seven-day operations whose occupations involve work on Saturdays and Sundays shall be paid time and one-half for work on these days only for time worked in excess of eight hours per day or in excess of forty hours in the Employee's working week, for which overtime has not already been earned; except as otherwise provided in Paragraphs 1, 2, 3, and 4 below:

(1) Such employees shall be paid time and one-half for hours worked on the employee's sixth work day in the week.

(2) Such employees shall be paid double time for hours worked on the seventh work day in the calendar week if the seventh work day results from the employee being required to work on scheduled off day (s) in that calendar week.

(3) Such employees will be paid double time for hours worked during the regular working hours of any shifts that start on any of the six legal holidays listed

COMPENSATION
STRAIGHT TIME

Sec. 5. (a) For the first eight hours worked in any continuous twenty-four hour period, beginning with the starting time of the employe's shift.

Sec. 5. (b) For time worked during the regular working hours of any shift which starts on the day before and continues into a specified holiday, Saturday, or Sunday.

TIME AND ONE-HALF

Sec. 6. (a) For time worked in excess of eight hours in any continuous twenty-four hours, beginning with the starting time of the employe's shift, except if such time is worked on a Sunday or holiday when double time will be paid as provided below: 1. For time worked on any shift which starts on Saturday.

DOUBLE TIME

Sec. 7. For time worked during the regular working hours of any shifts that start on Sundays, and the following legal holidays: New Year's Day, Fourth of July, Labor Day, Thanksgiving, Christmas and Memorial Day, and any time worked in excess of eight hours on a shift which starts the previous day and runs over into such Sunday or Holiday.

For all time worked on Sundays and the following legal holidays: New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving, and Christmas by employes whose occupational classifications are not regularly scheduled to work on these days.

For time worked in excess of four hours (at straight time on Monday through Friday or at time and one-

half on Saturday) on a shift which starts on December 24, or on December 31.

EXCEPTIONS TO ABOVE OVERTIME PAYMENT

Sec. 8. (a) Time and one-half shall not be payable under the provisions of Section 6(a) (Time and One-Half) on December 24, or on December 31, by reason of advancing the regular shift starting time of second (afternoon) or third (night) shift employees on such days, except if and then only to the extent that such advancement exceeds four hours for second shift employees or eight hours for third shift employees respectively, plus the shift gaps and lunch periods.

(b) Employees working in necessary continuous seven-day operations whose occupations involve work on Saturdays and Sundays shall be paid time and one-half for work on these days only for time worked in excess of eight hours per day or in excess of forty hours in the Employee's working week, for which overtime has not already been earned; except as otherwise provided in Paragraphs 1, 2, 3, and 4 below:

(1) Such employees shall be paid time and one-half for hours worked on the employee's sixth work day in the week.

(2) Such employees shall be paid double time for hours worked on the seventh work day in the calendar week if the seventh work day results from the employee being required to work on scheduled off day (s) in that calendar week.

(3) Such employees will be paid double time for hours worked during the regular working hours of any shifts that start on any of the six legal holidays listed

in Section 7, Article VII. In the case of employees who worked six or seven days during the work week, the first eight hours worked at double time on shifts starting on such holidays shall be counted in computing overtime for work in excess of 40 hours in the employee's working week.

(4) Such employees will be paid double time for hours worked in excess of four hours (at straight time on Monday through Friday or at time and one-half on the Employee's sixth work day in the week) on a shift which starts on December 24 or on December 31. In the case of employees who work 6 or 7 days during the work week, the hours paid at double time (not in excess of four) on December 24 or on December 31 shall be counted in computing overtime for work in excess of 40 hours in the employee's working week. Premium payments shall not be duplicated for the same hours worked under any of the terms of this section.

Sec. 9. Computation of Overtime. Time and one-half and double time shall be paid at the individual's average earned rate, which shall be computed by dividing the total earnings at straight time for the week in which the overtime (as listed under Sections 6 and 7) occurred, by the number of available hours.

Sec. 10. Holiday Pay.

(a) Employees shall be paid, as provided hereinafter, for New Year's Day, Memorial Day (or one other such holiday of greater local importance which must be designated in advance by mutual agreement locally in writing), Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day holidays and for half-holidays on December 24 and December 31 (hereinafter called holi-

days), providing they meet all of the following eligibility rules unless otherwise provided herein:

1. The employee has seniority as of the date of the holiday, and
 2. The employee would otherwise have been scheduled to work on such day if it had not been observed as a holiday, and
 3. The employee must have worked the last scheduled work-day prior to and the next scheduled work day after such holiday within the employee's scheduled work week. If the employee is required to work on December 24 during hours for which he does not receive double time pay in accordance with Article VII, (double time), such hours shall constitute his "last scheduled work day prior to December 24, and Christmas Day. The same rule shall apply in the case of December 31 and New Year's Day.
- (b) When a holiday falls on Saturday, eligible employees shall receive holiday pay provided they have worked the last preceding scheduled work day within the week in which that holiday falls.
- (c) Employees eligible under these provisions shall receive eight hours' pay for each of the six holidays specified in Section 10(a) Article VII, and four hours' pay each for December 24 and for December 31, computed at their regular straight time hourly rate exclusive of night shift and overtime premium. In the case of incentive workers, the employee's earned rate exclusive of night shift and overtime premium for the week in which the holidays fall, shall be used.

- (d) An employe whose work is in necessary continuous seven-day operations as covered by Section 8, Article VII, shall receive holiday pay only in the event the holiday falls on one of his regularly scheduled days off, and he meets the other eligibility requirements of this Holiday Pay Section; provided, however, that such employe shall not receive holiday pay if he is scheduled to work on such day off and absents himself from scheduled work on such holiday without reasonable cause acceptable to management.
- (e) Employes of a General Motors plant who obtain employment in another General Motors Plant will be eligible for holiday pay during their probationary period provided they have seniority in the home plant as of the date of the holiday and they are otherwise eligible under the terms of these provisions on Holiday Pay.
- (f) Employees with the necessary seniority who have been laid off in a reduction of force, or who have gone on sick leave, or on leave of absence for military service, during the work week prior to or during the week in which the holiday falls, shall receive pay for such holiday.
- (g) An employe who has been laid off because of model change, plant rearrangement, or inventory shall be eligible for holiday pay under these Holiday Pay provisions, for a specified holiday falling within the period of such layoff providing he meets all the following eligibility rules:
 - 1. The employe has seniority as of the date of the holiday.

2. The employe is ineligible for holiday pay for the holiday under the other provisions of this Holiday Pay section.
 3. The employe returns to work during the work week in which the holiday falls or during the work week immediately following the work week in which the holiday falls.
 4. The employe works the first day he is scheduled to work following the holiday.
- (h) When a holiday, specified above, falls within an eligible employe's approved vacation period, and he is absent from work during his regularly scheduled work week because of such vacation, he shall be paid for such holiday.
- (i) When an eligible employe is on an approved leave of absence and returns to work following the holiday but during the week in which the holiday falls, he shall be eligible for pay for that holiday. For the purpose only of applying this paragraph, December 24, and December 31, shall be considered to be in the same weeks respectively as Christmas Day and New Year's Day.
- (j) Employes not working in necessary continuous seven day operations who may be requested to work on a holiday and have accepted such holiday work assignment and then fail to report for and perform such work, without reasonable cause, shall not receive holiday pay under this Holiday Pay Section.
- (k) When any of the above-enumerated holidays fall on Sunday and the day following is observed as

the holiday by the State or Federal Government, the day of observance shall be considered as the holiday under the provisions of this Holiday Pay Section.

COMMITTEE PAY

Sec. 11. The Company shall pay each member of the Shop Committee, excluding the Chairman of the Committee, for time spent in adjusting grievances in their respective departments not to exceed two hours per week at the individual's base rate.

The Company, in addition, shall pay the Chairman of the Shop Committee for time spent in adjusting grievances, not to exceed eight hours per week at his hourly base rate.

The privilege of Committeemen to leave their work during working hours for the purpose of adjusting grievances without loss of pay is extended with the understanding that the time will be devoted to the prompt handling of legitimate grievances and will not be abused and that the Committeemen will continue to work at their assigned jobs at all times except when permitted to leave their work to handle grievances as provided herein.

An employe who is disciplined or discharged may request his Committeeman to handle a specified grievance before leaving the premises without regards to the restrictions on his time as provided in Article II, Section 5.

VACATIONS

Sec. 12. Vacation Pay Allowances. In lieu of vacation with pay for the year 1957, for December 31 Eligi-

bility, and 1958, the following vacation pay allowance provisions shall apply:

(a) 1. There shall be two eligibility dates, June 30, and December 31, on which dates employes may qualify for a vacation pay allowance as provided hereinafter.

2. Eligibility dates for vacation pay allowances shall be established as follows:

All employes with seniority dates between January 1 and June 30 inclusive, shall have June 30 as their annual vacation pay eligibility date.

All employes who have seniority dates between July 1 and December 31 inclusive, in the years 1940 through 1944, shall retain June 30 as their annual vacation pay eligibility date until after June 30 of the year in which they first attain fifteen years' seniority, at which time their annual vacation pay eligibility date shall be changed to December 31 and shall remain December 31 thereafter.

Employes with a June 30 eligibility date shall have their annual vacation pay allowance computed in accordance with Section 12(b) of Article VII. Employes with a December 31 eligibility date shall have their annual vacation pay allowance computed in accordance with Section 12(c) of Article VII.

(b) June 30 Eligibility Date:

1. Two percent of each employe's gross earnings will be paid each employe covered by this agreement who had one year's seniority as of June 30 and who worked in any General Motors Plant during the pay period in which June 30 occurs, or who has been laid off since May 1, or who went on sick leave since May 1, or on Military Leave of Absence since May 1.

2. Each employe having one or more year's seniority as of June 30 who is ineligible for vacation pay under the above paragraph, shall be entitled to full vacation pay based upon his seniority provided he has worked during 75% of the 52 pay periods ending with the last complete pay period in which June 30 occurs.

3. Employes having three years' seniority but less than five years seniority as of June 30 shall receive 3% of his gross earnings in accordance with the above provisions.

4. Employes having five years but less than 10 years' seniority as of June 30 shall receive 4½% of the employe's gross earnings in accordance with the above provisions.

5. Employes having ten years' but less than fifteen years' seniority as of June 30 shall receive 5¼% of the employes gross earnings in accordance with the above provisions.

6. Employes having 15 or more years' seniority as of June 30 shall receive 6% of the employe's gross earnings in accordance with the above provisions.

(c) December 31 Eligibility Date:

1. Two percent of each employe's gross earnings will be paid each employe covered by this Agreement, who had one year's seniority as of December 31 and who worked in any General Motors Plant during the pay period in which December 31 occurs, or who has been laid off since November 1, or who went on sick leave since November 1, or on Military Leave of Absence since November 1.

2. Each employe having one or more years' seniority as of December 31, who is ineligible for vacation pay

under the above paragraph, shall be entitled to full vacation pay based upon his seniority, provided he has worked during 75% of the 52 pay periods ending with the last complete pay period in which December 31 occurs.

3. Employees having three years' seniority but less than five years' seniority as of December 31 shall receive 3% of his gross earnings in accordance with the above provisions.

4. Employees having five years' but less than 10 years' seniority as of December 31 shall receive $4\frac{1}{2}\%$ of the employee's gross earnings in accordance with the above provisions.

5. Employees having ten years' but less than fifteen years' seniority as of December 31, shall receive $5\frac{1}{4}\%$ of his gross earnings in accordance with the above provisions.

6. Employees having 15 or more years' seniority as of December 31, shall received 6% of the employee's gross earnings in accordance with the above provisions.

(d) An employee shall be entitled to receive a vacation pay allowance based on only one eligibility date in any twelve months' period except as provided in Section 12(c) of Article VII for the year in which his eligibility date is changed from June 30 to December 31.

(e) In computing time worked to determine whether an employee has worked during 75% of the 52 pay periods referred to above, the employee shall be given accumulated credit for work performed in any General Motors plant during the applicable period.

(f) Irrespective of any employment or unemployment on the part of such employees, payments in lieu of vacation shall be made as soon as possible but not later than forty-five (45) days after the employee's eligibility date, unless the employee elects in writing to take such payment at a later date, but in any event payment will be made not later than five (5) months after the employee's eligibility date.

(g) Employees who, under the provisions of the General Motors Hourly Rate Employees Pension Plan, retire or are automatically retired and who would otherwise be entitled to a Vacation Pay Allowance shall receive their vacation pay allowance in accordance with the following:

1. Any such employee who would otherwise have had the requisite seniority as of his vacation pay eligibility date, shall not be deprived of his vacation pay allowance for the year in which the retirement occurs solely because of the fact that his seniority has been broken by his retirement.

2. In the case of any such employee who is actively at work at the time of his retirement:

- a. The phrase "laid off since May 1," appearing in Section 12(b) Article VII, shall, for the purposes of vacation pay eligibility only, be interpreted to include, "Retired between May 1 and June 30, both inclusive."

- b. The phrase "laid off since November 1," appearing in Section 12(c) Article VII, shall, for the purposes of vacation pay eligibility only, be interpreted to include "retired between November 1 and December 31, both inclusive."

(h) Any employe who, under the provisions of the General Motors Hourly Rate Employees' Pension Plan, retires or is automatically retired and who is ineligible for vacation pay allowance for his vacation eligibility year under any of the above vacation pay allowance provisions, may qualify for a vacation pay allowance in accordance with the following:

1. An employe upon retirement shall be compensated on the basis of percentage of gross earnings to which his seniority entitles him for the period commencing with the first pay period subsequent to the pay period in which his last previous eligibility date occurred and ending with the last day worked at time of retirement.

Article VIII—WAGES

Sec. 1. It is understood that Local Wage Agreement consists of the wage scale by classification as established in the Local Wage Schedule plus any written changes, additions or supplements thereto. Any changes, additions or supplements thereto shall be reduced to writing.

(a) The annual improvement factor provided herein recognizes that a continued improvement in the standard of living of employes depends upon technological progress, better tools, methods, processes and equipment and a cooperative attitude on the part of all parties in such progress. It further recognizes the principle that to produce more with the same amount of human effort is a sound, economic and social objective. Accordingly, all employes covered by this Agreement shall receive an improvement factor increase of two and one-half ($2\frac{1}{2}\%$) percent of his base hourly rate

(exclusive of cost-of-living allowance and shift premium), or six (6¢) cents per hour whichever is greater, effective June 1, 1957.

(b) In addition, a Cost-of-Living Allowance formula will be provided, and such allowances shall be determined in accordance with the provisions of Article VIII.

(c) The improvement factor increases in base rates provided for in Section 1(a) of Article VIII shall be added to the wage rates (minimum, intermediary, maximum) for each job classification. The Cost-of-Living Allowance provided for in Section 1(b) of Article VIII shall be added to each employee's straight time hourly earnings, and will be adjusted up or down each three months in line with the Cost-of-Living Allowance provided for in Section 1(b) of Article VIII.

(d) The Cost-of-Living Allowance provided for in Section 1(b) Article VIII, shall be paid on the basis of each employee's clock hours and will be adjusted up or down each three months in line with the Cost-of-Living Allowance provided for in Section 1(f) and (g).

(e) The Cost-of-Living Allowance will be determined in accordance with changes in the official Consumer Price Index, published by the Bureau of Labor Statistics, U. S. Department of Labor, (1947-1949=100) and hereinafter referred to as the BLS Consumer Price Index.

(f) Commencing with the pay period beginning June 1, 1957, and thereafter during the period of this Agree-

ment, adjustments in the Cost-of-Living Allowance shall be made quarterly at the following times:

<u>Effective Date of Adjustment</u>	<u>Based Upon</u>
First pay period beginning on or after:	BLS Consumer Price Index is of:
June 1, 1957, and at quarterly intervals thereafter for duration of the Agreement.	April 15, 1955, and at quarterly intervals thereafter for duration of the Agreement.

In no event will a decline in the BLS Consumer Price Index below 110.9 provide the basis for a reduction in the wage scale by job classification.

(g) The amount of the Cost-of-Living Allowance which shall be effective for any three-month period as provided in Section 1(b) and (f) shall be in accordance with the following table:

<u>BLS Consumer Price Index</u>	<u>Cost-of-Living Allowance, in Addition to Wage Scale by Job Classification</u>
110.8 or less	None
110.9 - 111.5	1¢ per hour
111.6 - 112.1	2¢ per hour
112.2 - 112.8	3¢ per hour
112.9 - 113.5	4¢ per hour
113.6 - 114.1	5¢ per hour
114.2 - 114.6	6¢ per hour
114.7 - 115.1	7¢ per hour
115.2 - 115.6	8¢ per hour
115.7 - 116.1	9¢ per hour
116.2 - 116.6	10¢ per hour

and so forth, with 1¢ adjustment for each 0.5 point change in the Index.

(h) The amount of any Cost-of-Living Allowance in effect at the time shall be included in computing overtime premium, night shift, premium, vacation payments, holiday payments, and call-in pay.

(i) In the event the Bureau of Labor Statistics does not issue the Consumer Price Index on or before

the beginning of the pay period referred to in Section 1(f), any adjustments required will be made at the beginning of the first pay period after receipt of the Index.

(j) No adjustments, retroactive or otherwise, shall be made due to any revision which may later be made in the published figures for the BLS Consumer Price Index for any base month.

(k) The parties to this Agreement agree that the continuance of the Cost-of-Living Allowance is dependent upon the availability of the official monthly BLS Consumer Price Index in its present form and calculated on the same basis as the Index for April, 1955, unless otherwise agreed upon by the parties.

ARTICLE IX—FLAT RATE STANDARDS

Sec. 1. Flat rate standards shall be established on the basis of fairness and equity consistent with the quality of workmanship, efficiency of operations, and the reasonable working capacity of normal operators. The Cadillac Motor Car Division Local Management has full authority to settle such matters.

Sec. 2. When a dispute arises regarding standards established or changed by the Management, the complaint should be taken up with the foreman. If the dispute is not settled by the foreman, the committeeman for that district may, without regard to the restrictions on his time as provided in Section 5 of the Representation Section, upon reporting to the foreman of the department involved, examine the job and the foreman will furnish him with all of the facts of the case. If there is still a dispute after the committee-

man has completed his examination, the foreman will then re-examine the operations in detail with the committeeman on the job. If the matter is not adjusted at this stage it may be further appealed as provided in the Grievance Procedure.

ARTICLE X—GENERAL PROVISIONS

Sec. 1. Bulletin Boards

The Company will maintain bulletin boards which may be used by the Union for posting notices approved by the Management and restricted to:

- (a) Notices of Union recreational and social affairs.
- (b) Notices of Union Elections.
- (c) Notices of Union appointments and results of elections.
- (d) Notices of Union meetings.

The number and location of such bulletin boards shall be decided by the Management and the Shop Committee

Sec. 2. Any employee with one or more years' seniority who is called to and reports for Jury Duty shall be compensated by the Corporation at the rate of five (\$5.00) dollars per day for each day of Jury Duty performed on which the employee otherwise would have been scheduled to work for the Corporation and does not work, not to exceed a total of fourteen (14) days in any calendar year. Such compensation shall be payable only if the employee (1) gives the Corporation prior notice of such Jury Duty call, and (2) presents proper evidence as to the Jury Duty performed.

Sec. 3. The parties hereto agree that this Agreement is the entire Agreement between the parties hereto and

that there are no oral or other Agreements or understandings between them.

Sec. 4. In the event any provisions of this Agreement shall be held contrary to existing or future Federal or State Laws, the remainder of the Agreement shall not be affected thereby.

Sec. 5. This Agreement dated October 17, 1957, shall continue in full force and effect without change until October 21, 1958. If either party desires to terminate this Agreement, it shall, 60 days prior to October 21, 1958, give written notice of the termination. If neither party shall give notice to terminate this Agreement as provided above, or to modify this Agreement as hereinafter provided, the Agreement shall continue in effect from year to year after October 21, 1958, subject to termination by either party on 60 days' written notice prior to October 21, of any subsequent year.

If either party desires to modify or change this Agreement it shall, sixty days prior to October 21, 1958, or any subsequent October 21, date, give written notice to such effect. Within ten days after receipt of said notice, a conference will be arranged to negotiate the proposals in which cases this Agreement shall continue in full force and effect until terminated as provided hereinafter.

If notice of intention to modify or change has been in accordance with the above provisions, this Agreement may be terminated by either party on thirty days' written notice of termination given on or after the next September 21, following said notice of intention to modify or change.

Sec. 6. Pension Plan and Insurance Program

The parties have provided for a Pension Plan, Insurance Program, and Income Security Plan by Supplemental Agreement signed by the parties simultaneously with the execution of this Agreement, which Supplemental Agreements are attached hereto to Exhibit "A", Exhibit "B", Exhibit "C" respectively and made part of this Agreement as if set out in full herein, subject to all provisions of this Agreement. No matter respecting the provisions of the Pension Plan, Insurance Program, or Income Security Plan, shall be subject to the grievance procedure established in this Agreement.

Sec. 7. Waiver. The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Therefore, the Company and the Union, for the life of this Agreement, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated, to bargain collectively with respect to any subject or matter not specifically referred to, or covered in this Agreement, or with respect to any subject or matter not specifically referred to or covered in this Agreement, even though such subject or matter may not have been within the knowledge or contemplation of either or both of the parties at the time that they negotiated or signed this Agreement.

1072 *International Assn. of Machinists, etc. vs.*

In witness whereof, the parties hereto have hereunto affixed their hands and seals this 17th day of October, 1957.

LOCAL #1186 INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT LODGE #94, AFL-CIO

H. A. Cooksey

By: Chas. E. Edwards

Paul A. French

K. W. Buckley

Edward O. Lee

L. E. Dickerson

George Harlan

John V. Girardi

CADILLAC MOTOR CAR DIVISION

LOS ANGELES BRANCH

GENERAL MOTORS CORPORATION

M. S. Lester

J. C. Dinniene

W. E. Keane

CADILLAC MOTOR CAR DIVISION

J. G. Pais

Admitted in Evidence 2-24-66.

GENERAL COUNSEL'S EXHIBIT No. 19-D.

LOCAL WAGE AGREEMENT

This Wage Agreement, entered into this 17th day of October, 1957, between the Cadillac Motor Car Division, General Motors Corporation, having service stations located at 1076 West Seventh Street and 5151 Wilshire Boulevard, City of Los Angeles, State of California, and International Association of Machinists, District Lodge #94, Local 1186, A.F.L.-C.I.O.

I. It is mutually agreed that the classifications, hourly base rates and guaranteed rates of employes covered by this Agreement shall be in accordance with Paragraph 3 and 4 effective October 21st, 1957.

II. It is further agreed that the guaranteed rates shall apply only on a weekly basis and only in the event that an employee has not earned the equivalent of his guaranteed rate times the number of hours worked during the week.

III. Classifications

	<u>Base Rate</u>	<u>Guaranteed Rate</u>
Mechanic	\$2.12	\$2.12
Painter	2.12	2.12
Body Man	2.12	2.12
Trimmer	2.12	2.12
Sheet Metal Man	2.12	2.12
*Washers	1.63	1.63
*Polishers	1.63	1.63
*Lubricators	1.63	1.63

*In addition to the above base rate, the 19¢ 1953 Cost-of-living will be paid for each hour of work to the classifications of Washers, Polishers and Lubricators.

IV. New employes hired in the following classifications shall be hired at a rate no lower than ten (10) cents below the rate of the job classification, and shall receive an automatic increase of five (5) cents at the expiration of thirty (30) days and, if retained, an additional increase of five (5) cents at the expiration of ninety (90) days or as soon as the employee can meet the standard requirements for an average employee on the job.

	<u>Hiring Rate</u>	<u>30-Days</u>	<u>90-Days</u>
Garage Attendant	\$1.70	\$1.75	\$1.80
Elevator Operator	1.68	1.73	1.78
Maintenance Men	1.90	1.95	2.00

V. It is understood by both parties that this Agreement shall continue in full force and effect until Oct. 21st, 1958.

VI. In witness whereof, the parties hereto have caused their names to be subscribed by their duly authorized officers and representatives the day and year first written above.

INTERNATIONAL ASSOCIATION OF
MACHINISTS, DISTRICT LODGE #94,
LOCAL #1186, A.F.L.-C.I.O.

/s/ H. A. Cooksey by Chas E. Eduards

/s/ Paul A. French

/s/ H. N. Buckley

/s/ Edward O. Lee

/s/ L. E. Dickerson

ILLEGIBLE

/s/ John V. Girardi

CADILLAC MOTOR CAR
DIVISION
LOS ANGELES BRANCH
GENERAL MOTORS
CORPORATION

/s/ M. S. Lester

General Manager Los Angeles Branch

/s/ J. C. Dinniene

Approved:

J. G. Pais

Cadillac Motor Car Division

Detroit, Michigan

Admitted in Evidence 2-24-66.

GENERAL COUNSEL'S EXHIBIT No. 19-E.

CONFIDENTIAL

January 21, 1965

International Association of Machinists

District Lodge No. 94

214 South Loma Drive—Suite #6

Los Angeles, California

Atten: Mr. B. J. "Barney" Hubert
Business Representative

Dear Sir:

This is to confirm our conversation with you in Los Angeles at the Beverly Hilton Hotel on January 12, 1965, at which time I advised you that the Cadillac Management is seriously thinking about the possibility

of discontinuing all Branch retail sales and service operations in Los Angeles. Should such a decision be made in the future, it would be anticipated that all retail and service operations would be handled by independent dealers which means that the Cadillac Motor Car Division would no longer operate its present Bixel and Wilshire Branches.

I also stated that we were advising you of our thinking about this possible change at this time, even though we would be unable to give you a specific date as to when it might become effective if and when a decision to make such a change was reached.

I also stated that we would keep you advised of the progress or lack of progress in our present thinking and that if we progress towards a decision to effectuate such a change, we would be happy to meet with you again to further explain and explore the possible effects, and any problems that might be associated with such a change, at which time we would welcome any suggestions or comments which you might wish to offer for our mutual consideration.

Yours very truly,

/s/ J. G. PAIS

Assistant Personnel Director

Admitted in Evidence, 2-24-66.

GENERAL COUNSEL'S EXHIBIT No. 19-F.

CONFIDENTIAL

January 21, 1965

Painters Local Union, AFL-CIO
Local #1798
846 So. Union Avenue
Los Angeles, California

Atten: Mr. John Lazzara
Business Representative

Dear Sir:

This is to confirm our conversation with you in Los Angeles at the Beverly Hilton Hotel on January 12, 1965, at which time I advised you that the Cadillac Management is seriously thinking about the possibility of discontinuing all Branch retail sales and service operations in Los Angeles. Should such a decision be made in the future, it would be anticipated that all retail and service operations would be handled by independent dealers which means that the Cadillac Motor Car Division would no longer operate its present Bixel and Wilshire Branches.

I also stated that we were advising you of our thinking about this possible change at this time, even though we would be unable to give you a specific date as to when it might become effective if and when a decision to make such a change was reached.

I also stated that we would keep you advised of the progress or lack of progress in our present thinking and that if we progress towards a decision to effectuate such a change, we would be happy to meet with you again to further explain and explore the possible

1078 *International Assn. of Machinists, etc. vs.*

effects, and any problems that might be associated with such a change, at which time we would welcome any suggestions or comments which you might wish to offer for our mutual consideration.

Yours very truly,

/s/ J. G. PAIS

Assistant Personnel Director

J.C.Pais

Admitted in Evidence 2-24-66.

GENERAL COUNSEL'S EXHIBIT No. 19-G.
CADILLAC MOTOR CAR DIVISION

General Motors Corporation
Detroit, Michigan 48232

March 26, 1965

International Association of Machinists
District Lodge No. 94
214 South Loma Drive - Suite #5
Los Angeles, California

Atten: Mr. B. J. "Barney" Hubert
Business Representative

Dear Sir:

This is in reference to my letter to you dated January 21, 1965, wherein we stated that we would keep you advised of the progress or lack of progress relative to the subject matter of that letter.

At this time I am informing you that progress is being made and there is an increasing probability of the Cadillac Motor Car Division discontinuing all Branch Re-

tail and Service operations in Los Angeles. This means that the Retail and Service operations would be handled by independent dealers.

I am advising you of this possible change at this time even though we would be unable to give you a specific date as to when this change might become effective. However, inasmuch as we have made progress I will be happy to meet with you again to discuss and explore the possible effects and any problems that might be associated with such a change, at which time we would welcome any suggestions or comments which you might wish to offer for our mutual consideration.

I would appreciate hearing from you relative to setting up a meeting to discuss this matter if you so desire.

Yours very truly,

/s/ J. G. PAIS

Assistant Personnel Director

J.G.Pais

Admitted in Evidence 2-24-66.

GENERAL COUNSEL'S EXHIBIT No. 19-H.

March 26, 1965

Painters Local Union, AFL-CIO

Local #1798

846 So. Union Avenue

Los Angeles, California

Atten: Mr. John Lazzara

Business Representative

Dear Sir:

This is in reference to my letter to you dated January 21, 1965, wherein we stated that we would keep you advised of the progress or lack of progress relative to the subject matter of that letter.

At this time I am informing you that progress is being made and there is an increasing probability of the Cadillac Motor Car Division discontinuing all Branch Retail and Service operations in Los Angeles. This means that the Retail and Service operations would be handled by independent dealers.

I am advising you of this possible change at this time even though we would be unable to give you a specific date as to when this change might become effective. However, inasmuch as we have made progress I will be happy to meet with you again to discuss and explore the possible effects and any problems that might be associated with such a change, at which time we would welcome any suggestions or comments which you might wish to offer for our mutual consideration.

I would appreciate hearing from you relative to setting up a meeting to discuss this matter if you so desire.

Yours very truly,

/s/ By J. G. PAIS

Assistant Personnel Director

J. G. Pais

Admitted in Evidence 2-24-66.

GENERAL COUNSEL'S EXHIBIT No. 19-I.

May 10, 1965

Mr. John Lazzara
Business Representative
Painters Local Union, AFL-CIO
Local #1798
846 So. Union Avenue
Los Angeles, California - 90017

Dear Mr. Lazzara:

With reference to your telephone call this morning, May 10, 1965, you indicated that your attorneys wanted to meet with me or a representative of Cadillac Motor Car Division sometime this month. Upon inquiry of you as to the subject matter of the meeting, you informed me that they wanted to know who is taking over the operation of the Cadillac Branches in Los Angeles and when.

I told you that the Branch location on 7th Avenue and Bixel is being taken over by Mr. LaRue Thomas and that the Wilshire Branch will be operated by a Mr. Lou Ehlers, and that both locations will be operated by the above mentioned on June 1, 1965.

As I understand our telephone conversation this should answer the questions your attorneys were inquiring about.

Yours very truly,

J. G. PAIS

Assistant Personnel Director

J. G. Pais

c.c. Mr. B. Hubert

Admitted in Evidence 2-24-66.

GENERAL COUNSEL'S EXHIBIT No. 19-J.

CADILLAC MOTOR CAR DIVISION

SUPPLEMENTAL AGREEMENT TO AGREEMENT DATED DECEMBER 1, 1964, BETWEEN THE CADILLAC MOTOR CAR DIVISION OF GENERAL MOTORS CORPORATION AND THE INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT LODGE #94, LOCAL #1186 AFL-CIO AND AUTOMOTIVE, MARINE, PRODUCTION FINISHERS, EQUIPMENT MAINTENANCE AND PUBLIC SERVICE PAINTERS, LOCAL UNION #1798, BROTHERHOOD OF PAINTERS, DECORATORS AND PAPER HANGERS OF AMERICA, AFL-CIO.

Agreement made this 28th day of April, 1965, between the Cadillac Motor Car Division, General Motors Corporation and the International Association of Machinists, District Lodge #94, Local #1186 AFL-CIO and Automotive, Marine, Production Finishers, Equipment Maintenance and Public Service Painters, Local Union #1798, Brotherhood of Painters, Decorators and Paper Hangers of America, AFL-CIO, supplementing the Agreement dated December 1, 1964, between the parties.

It is hereby agreed that in recognition of the conditions as they presently exist in the Los Angeles Branch of the Cadillac Motor Car Division, Los Angeles, California, hourly employes at 1076 West Seventh Street and at 5151 Wilshire Boulevard, City of Los Angeles, State

of California, may waive their seniority rights and take a layoff out of line of seniority under the seniority provisions of the existing agreement provided that their services are no longer needed at the Cadillac Motor Car Division, Los Angeles Branch.

In witness whereof, the parties hereto have caused their names to be subscribed by their duly authorized representatives the day and year first written above.

INTERNATIONAL ASSOCIATION OF
MACHINISTS, DISTRICT LODGE #94,
LOCAL #1186, AFL-CIO

/s/ By B. J. HUBERT

AUTOMOTIVE, MARINE, PRODUCTION
FINISHERS, EQUIPMENT MAINTENANCE
AND PUBLIC SERVICE PAINTERS LOCAL
UNION #1798, BROTHERHOOD OF
PAINTERS, DECORATORS AND PAPER
HANGERS OF AMERICA, AFL-CIO

/s/ By JOHN J. LAZZARA

CADILLAC MOTOR CAR DIVISION
GENERAL MOTORS CORPORATION
LOS ANGELES BRANCH

/s/ By [ILLEGIBLE]

/s/ By [ILLEGIBLE]

CADILLAC MOTOR CAR DIVISION
GENERAL MOTORS CORPORATION
DETROIT, MICHIGAN

/s/ By J. G. PAIS

Admitted in Evidence 2-24-66.

GENERAL COUNSEL'S EXHIBIT No. 19-J.

CADILLAC MOTOR CAR DIVISION

SUPPLEMENTAL AGREEMENT TO AGREEMENT DATED DECEMBER 1, 1964, BETWEEN THE CADILLAC MOTOR CAR DIVISION OF GENERAL MOTORS CORPORATION AND THE INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT LODGE #94, LOCAL #1186 AFL-CIO AND AUTOMOTIVE, MARINE, PRODUCTION FINISHERS, EQUIPMENT MAINTENANCE AND PUBLIC SERVICE PAINTERS, LOCAL UNION #1798, BROTHERHOOD OF PAINTERS, DECORATORS AND PAPER HANGERS OF AMERICA, AFL-CIO.

Agreement made this 28th day of April, 1965, between the Cadillac Motor Car Division, General Motors Corporation and the International Association of Machinists, District Lodge #94, Local #1186 AFL-CIO and Automotive, Marine, Production Finishers, Equipment Maintenance and Public Service Painters, Local Union #1798, Brotherhood of Painters, Decorators and Paper Hangers of America, AFL-CIO, supplementing the Agreement dated December 1, 1964, between the parties.

It is hereby agreed that in recognition of the conditions as they presently exist in the Los Angeles Branch of the Cadillac Motor Car Division, Los Angeles, California, hourly employes at 1076 West Seventh Street and at 5151 Wilshire Boulevard, City of Los Angeles, State

of California, may waive their seniority rights and take a layoff out of line of seniority under the seniority provisions of the existing agreement provided that their services are no longer needed at the Cadillac Motor Car Division, Los Angeles Branch.

In witness whereof, the parties hereto have caused their names to be subscribed by their duly authorized representatives the day and year first written above.

INTERNATIONAL ASSOCIATION OF
MACHINISTS, DISTRICT LODGE #94,
LOCAL #1186, AFL-CIO

/s/ By B. J. HUBERT

AUTOMOTIVE, MARINE, PRODUCTION
FINISHERS, EQUIPMENT MAINTENANCE
AND PUBLIC SERVICE PAINTERS LOCAL
UNION #1798, BROTHERHOOD OF
PAINTERS, DECORATORS AND PAPER
HANGERS OF AMERICA, AFL-CIO

/s/ By JOHN J. LAZZARA

CADILLAC MOTOR CAR DIVISION
GENERAL MOTORS CORPORATION
LOS ANGELES BRANCH

/s/ By [ILLEGIBLE]

/s/ By [ILLEGIBLE]

CADILLAC MOTOR CAR DIVISION
GENERAL MOTORS CORPORATION
DETROIT, MICHIGAN

/s/ By J. G. PAIS

Admitted in Evidence 2-24-66.

GENERAL COUNSEL'S EXHIBIT No. 19-K.

SUMMARY OF BENEFIT PLAN PROVISIONS
APPLICABLE TO HOURLY-RATE EMPLOYEES
CADILLAC MOTOR CAR DIVISION
LOS ANGELES, CALIFORNIA

Note: This summary describes the various benefit plan provisions in general terms only. The employee booklets entitled "Your GM Income Security Plan Benefits", "Your Insurance Benefits" and "Your Pension Benefits" describe GM benefit plans in greater detail. The full details and governing language are set forth in the various Plans and Programs. The description in Sections 2 and 3 regarding your Insurance Benefits apply only if you were actively at work on or after October 1, 1964.

1. INCOME SECURITY PLAN BENEFITS

If you are covered by the General Motors Income Security Plan, you may be eligible to make weekly withdrawals under the GM Income Security Plan during your layoff.

To make withdrawals from your Security Fund Account you must:

(1) Apply in writing on application form GM-ISP-1 for each week for which you wish to make a withdrawal. Applications may be filed either in person or by mail.

(2) Supply information with respect to any earnings or other benefits you received during that week and, if you are entitled to a state Unemployment Compensation benefit for the week, furnish evidence satisfactory to General Motors that you received or are entitled to receive such benefit.

If your seniority is broken and you do not have seniority at any other plant or division of General Motors, you should apply immediately on application form GM-ISP-2 for a final settlement of your Security Fund Account.

If, as a consequence of the retail store closing, you do not have active service in a unit of Employees covered by the General Motors Income Security Plan for a continuous period of more than 2 years, you should apply immediately for final settlement of your Security Fund Account on Form GM-ISP-2 even though you may still have seniority at a General Motors plant or Division.

Note: If you have ten or more years of credited service under the GM Pension Plan and your seniority is broken other than by retirement, you will be eligible for a deferred pension benefit payable as early as age 60. This is explained fully later in this material. Eligibility for such a deferred pension benefit will not prohibit your receiving a final settlement of your Security Fund Account.

2. GROUP LIFE, EXTRA ACCIDENT, SURVIVOR INCOME BENEFIT, AND SICKNESS AND ACCIDENT INSURANCE

Layoff

For the first month following the end of the month in which you are laid off, your Life, Extra Accident, Survivor Income Benefit, and Sickness and Accident Insurance will be continued, and GM will pay the full cost. For the next eleven months of layoff you may continue only your Life, Extra Accident, and Survivor

Income Benefit Insurance by making monthly contributions of 50¢ per \$1000 of Life Insurance. At the end of this period (or, if you fail to make any required contribution, at the end of the last month for which you contributed) your insurance will be canceled. If your insurance is canceled, you may obtain an individual policy of insurance without medical examination. See Conversion Privilege below. Cancellation of your seniority to obtain final settlement of your Income Security Plan Account under the Income Security Plan will not affect your group Life Insurance continuation privileges under the Insurance Program.

Total Disability

If you are now totally disabled, or become so disabled while sickness and accident insurance is still in force after your layoff commences (as set forth above), you will receive Sickness and Accident Benefits until you recover from your disability, subject to a maximum period of 52 weeks. While you are entitled to receive Sickness and Accident Benefits, or, if longer, while you are totally and continuously disabled and remain on an approved disability leave of absence, your Life, Extra Accident, Survivor Income Benefit, and Sickness and Accident Insurance will be continued and GM will pay the full cost, but not to exceed the period equal to your Years of Participation as of your first day of disability. If you continue to be disabled or become totally disabled after your Sickness and Accident Insurance has been canceled but while your Life, Extra Accident, and Survivor Income Benefit Insurance is still in force, report such fact to the insurance office at Cadillac Motor Car Division in Detroit, Michigan. You will then be informed of any additional rights you may have.

Additional Continuance Privileges

Age 55 to 60

If you retire or are retired under the early retirement provision of the Pension Plan at or after age 55 but prior to age 60 and were insured from age 55 to your retirement date, you may continue your Life and Extra Accident Insurance to age 65 by making monthly contributions of 50¢ per \$1000 of Life Insurance.

Age 60 to 65

If you cease active work at or after age 60 but prior to age 65 and are insured from age 60 to the date you cease active work (or if you cease active work prior to age 60 and continue to be insured at age 60), and had 5 or more Years of Participation in the Group Insurance Plan at the end of the month in which you became age 60, you may continue your Life and Extra Accident Insurance to age 65 by making monthly contributions of 50¢ per \$1000 of Life Insurance. Your Survivor Income Benefit Insurance may be continued along with your Life and Extra Accident Insurance, but not beyond the date you retire.

Age 65 and Over

If you have 10 or more Years of Participation at age 65 and are insured at such time, you will have Continued Life Insurance in a reducing amount without further contributions.

Your Contributions

Your contributions are due on or before the first of the month for which coverage is to be applied. Prior to August 1, 1965 such contributions should be brought

or mailed to the office designated for this purpose at the Cadillac Motor Car Division location at 1076 West 7th Street, Los Angeles, California. On and after August 1, 1965 your contributions should be mailed to Cadillac Motor Car Division, Payroll Dept., 2860 Clark, Detroit, Michigan 48232. Failure to make your contributions by the end of the month for which coverage is to be provided will result in cancellation of your insurance as of the end of the last month for which you contributed.

Conversion Privilege

During the 31 days following cancellation of your GM Life Insurance for any reason, you may convert all or part of your Life Insurance, plus an amount equal to any Survivor Income Benefit Insurance for which you are covered at the time your Life Insurance is discontinued, to an individual policy without medical examination, as described in your Insurance Certificate. You may choose any type of life insurance policy (except term insurance) then being issued by the Metropolitan Life Insurance Company. The cost to you for such individual policy will depend upon the amount and type of policy and your class of risk and age at the time. You may apply for such individual policy at any local office of the Metropolitan Life Insurance Company or at its home office, One Madison Avenue, New York. New York.

3. HOSPITAL AND MEDICAL EXPENSE BENEFIT COVERAGE

Layoff

Your Blue Cross and Blue Shield coverages may be continued for up to 24 months after the last month for

which contribution was made by GM while you were at work. You must contribute the full monthly subscription charge for such coverages. During the first 12 consecutive months of layoff you may authorize monthly withdrawals from your Security Fund Account under the Income Security Plan to pay such contributions. If you do not authorize such withdrawals, or if the balance in your Account is insufficient to permit such withdrawals, you must contribute the full monthly subscription charge in cash. At the expiration of your continuation period, you may make arrangements with the Blue Cross and Blue Shield plans for coverages on a "direct pay" basis.

Disability Leave of Absence

Your Blue Cross and Blue Shield coverages will be continued while you are on an approved disability leave of absence, provided you remain totally and continuously disabled. Under such circumstances, GM will pay the full monthly subscription charge for such coverages.

Retirement

Your Blue Cross and Blue Shield coverages may be continued for your lifetime if you retire and are eligible to receive a GM pension (other than a deferred pension), or if your employment is terminated at age 65 or older for any reason, other than a discharge for cause, with insufficient credited service to entitle you to a GM pension. GM will pay the full monthly subscription charge for such coverages.

If you retire before age 65 but are not eligible to receive a GM pension, you may continue your Blue Cross and Blue Shield coverages by contributing the

mit a letter from the Social Security Administration stating you are ineligible for a disability insurance benefit under the Federal Social Security Act, an additional benefit of \$5.20 x years of credited service (maximum of \$130) will be payable to age 65, or, if earlier, the age at which you become or could have become eligible for an unreduced Federal Social Security benefit for age or disability.

You must apply for such disability pension benefits and submit medical evidence satisfactory to General Motors to establish that you are "totally and permanently disabled" as defined in the Pension Plan.

Supplemental Allowance

If your seniority is unbroken on or after 8-1-65 and your retirement benefits commence on or after 9-1-65, you may be eligible for a supplemental allowance so that your retirement benefits will total up to \$400 monthly (if not eligible for unreduced Social Security benefits), subject to a maximum of 70% of your final monthly base pay plus cost of living. This \$400 amount is reduced if your credited service is less than 30 or your age is less than 60. The supplemental allowance will be payable to age 65 unless forfeited earlier because of earnings after retirement of over \$1200 in a calendar year.

Benefits for Surviving Spouse

If you die after age 60 but prior to retirement, or after age 55 when age and credited service total 85 or more, your surviving spouse may be eligible for a lifetime benefit as though you had retired voluntarily with the survivor option in effect.

If you die after retirement with the survivor option in effect, your surviving spouse will be eligible for lifetime income. A disability retiree would be eligible to elect the survivor option at age 60.

Deferred Vested Benefits

If you break seniority other than by retirement, and have at least 10 years of credited service, you will receive a deferred pension certificate, under which benefits are available commencing as early as age 60 on a reduced basis or at age 65 without reduction.

Monthly benefits commencing at age 65 will be \$4.25 x your years of credited service.

To receive deferred pension benefits, you must file a written request with GM for your deferred pension benefits not earlier than 60 days prior to your 60th birthday and not later than your 70th birthday. Your benefits will commence the later of the first of the month following the month (1) you attain age 60 or (2) such written request is received by GM.

Admitted in Evidence 2-24-66.

GENERAL COUNSEL'S EXHIBIT No. 19-L.

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1965 May 19 A.M. 8 41

J G PAIS, ASSISTANT PERSONAL DIRECTOR

CADILLAC MOTOR CAR DIVN GENERAL
MOTORS CORP DET PAINTERS UNION LO-
CAL 1798 ADVISE THAT MOTOR CAR DEAL-
ERS ASSOCIATION SOLICITING APPLICA-

TION FOR EMPLOYMENT FOR EMPLOYEES AT CADILLAC MOTOR CAR DIVISION AND BOTH BRANCHES IN LOS ANGELES. PAINTERS LOCAL 1798 IS THE DESIGNATED BARGAINING REPRESENTATIVE UNDER NATIONAL LABOR RELATION ACT UNLESS PRACTICE STOPPED AND SATISFACTORY EXPLANATION IS GIVEN PAINTERS LOCAL WILL FILE UNFAIR LABOR PRACTICE CHARGES PAINTERS LOCAL 1798 IS AGAIN REQUESTING A COLLECTIVE BARGAINING MEETING TO DISCUSS ALL PROBLEMS OF CHANGES OF OPERATIONS

LEO GEFFNER.

839A EST MAY 19 65

Admitted in Evidence 2-24-66.

GENERAL COUNSEL'S EXHIBIT No. 19-M.

[Letterhead]

May 17, 1965

Mr. J. G. Pais, Assistant Personnel Director
Cadillac Motor Car Division
General Motors Corporation
Detroit, Michigan 48232

Re: Cadillac Motor Car—Los Angeles Division

Dear Mr. Pais:

This office is legal counsel for District Lodge 94, International Association of Machinists and its affiliated local lodges. The firm of Levy, DeRoy, Geffner, Koszdin & Glow is counsel for Painters Union, Local 1798.

We are advised that the Cadillac agency located at 7th and Bixel Streets, Los Angeles, presently under contract with the above unions has been sold to a party named Lou Ehlers. Could you please advise me immediately as to the business concern that Mr. Ehlers is associated with and its address. It is our desire to make contact with that concern to ascertain whether it will recognize and adhere to the terms and provisions of the collective bargaining agreement presently in effect with your company.

Thank you for your cooperation.

Yours truly,

RICHMAN, GARRETT & ANSELL

/s/ By HERBERT M. ANSELL

Herbert M. Ansell

Barney Hubert

IAM District Lodge 94

214 So. Loma Drive

Los Angeles, Calif.

HMA :ml

cc: Herbert Cooksey

IAM District Lodge 94

214 So. Loma Drive

Los Angeles, Calif.

Leo Geffner, Esq.

Levy, DeRoy, Geffner, Koszdin & Glow

1520 Wilshire Boulevard

Los Angeles, California

Admitted in Evidence 2-24-66.

GENERAL COUNSEL'S EXHIBIT No. 19-N.

[Letterhead]

June 8, 1965

Cadillac Motor Car Division
General Motors Corporation
Detroit, Michigan

Attention: Mr. J. G. Pais, Ass't Personnel Director
Re: Cadillac Motor Car Division

Gentlemen:

As you are aware, charges of unfair labor practice have been filed against your company in Case Nos. 21-CA-6747-1 and 6748-2, alleging a refusal to bargain in good faith with the undersigned unions.

The undersigned legal counsel representing the Machinists and the Painters Unions have offered to arbitrate the question of whether and the extent of which the existing labor agreements in the agencies located at 7th & Bixel and Wilshire are in effect. Such offer was tendered to Lou Ehlers and to La Rue Thomas.

At this time, the undersigned unions invite your company to participate in such proceeding and to be heard to the extent deemed appropriate by you.

Article IV of the Agreement provides for a comprehensive scheme for the processing of grievances through arbitration. To expedite this matter, the undersigned will be agreeable to waiving the preliminary grievance requirements contained in Sections 1, 2 and 3 thereof. Section 4 provides for the reference of the dispute to an impartial arbitrator selected by both parties. I would suggest in this regard that selection be

made through the auspices of the Federal Mediation and Conciliation Service.

If we do not hear from you within 3 days from date of this letter, we will assume this to constitute a refusal on your part to arbitrate the above dispute and will then proceed accordingly with all appropriate legal action.

Yours truly,

RICHMAN, GARRETT & ANSELL

/s/ By HERBERT M. ANSELL

Herbert M. Ansell

Attorney for Machinists

District Lodge 94

LEVY, DeROY, GEFFNER,

KOSZDIN & GLOW

/s/ By LEO GEFFNER

Leo Geffner

Attorney for Painters Union,

Local 1798

HMA:ml

cc: Herbert A. Cooksey

IAM District Lodge 94

214 So. Loma Drive

Los Angeles, California 90026

Barney Hubert

IAM District Lodge 94

214 So. Loma Drive

Los Angeles, California 90026

Leo Geffner, Esq.

615 South Flower Street

Los Angeles, California 90017

Admitted in Evidence 2-24-66.

GENERAL COUNSEL'S EXHIBIT No. 19-O.

SPECIAL UNION-MANAGEMENT MEETING
AT THE MAYFAIR HOTEL, LOS AN-
GELES, CALIFORNIA, 10:30 A.M., OCTO-
BER 15, 1957

Present for the Union: Messrs. P. A. French, C. E. Edwards, K. W. Buckley, V. Dickerson, G. Harlan, E. Lee, J. Girardi.

Present for Management: Messrs. M. S. Lester, J. G. Pais, J. L. Dinniene, W. E. Keane.

Management presented the Union with the wage proposals attached.

The Union accepted management's proposal, subject to ratification by the membership.

The Union then asked for an interpretation of Article V, Section 7 of the Contract.

Management stated that, if a layoff should become necessary, Management would, wherever possible, give 24 hour advance notice to the employee affected; that the 24 hour notice was applicable to a five day working week and not applicable to Saturday or Sunday if such Saturday or Sunday was not a scheduled day of work.

The Union then asked Management to explain our policy regarding lay off of employees.

Management stated that their policy of affecting a reduction in force took place at the end of a week, providing of course that such lay off was within the control of local management. Management does not subscribe to intermittent lay offs which in effect reduces the work week and which really could be termed temporary lay offs, however, management on a permanent

layoff in a complete reduction in force would, wherever possible and practical, lay off at the end of the week and provide 24 hour notice, as outlined in the Main Agreement. Lay offs for disciplinary purposes, however, can be effected at any time.

Meeting adjourned 12:30 P.M.

Admitted in Evidence 2-24-66.

GENERAL COUNSEL'S EXHIBIT No. 19-P.

7. Commerce—The Employer is engaged in commerce within the meaning of Section 2(6) of the National Labor Relations Act, and a question affecting commerce has arisen concerning the representation of employees within the meaning of Section 9(c).

General Motors Corporation, Cadillac Motor Car Division, Los Angeles Branch, during the past 12-month period, has received at its Los Angeles location, goods valued in excess of \$1,000,000. from points located outside the State of California.

8. Names on Ballot—In the event more than one labor organization is signatory to this agreement, the choices on the ballot will appear in the wording indicated below and in the order enumerated below, reading from left to right on the ballot:

First

Second

Third

Fourth

9. Payroll Period for Eligibility—Ending July 14, 1967.

1100 *International Assn. of Machinists, etc. vs.*

10. Date, Hours, and Place of Election—5151 Wilshire Blvd., July 24, 1957, 11:00-11:30 a.m., Conference room-2nd floor; 1076 W. 7th Street, July 24, 1957, 1:00 p.m.-2:00 p.m., Facility Maint. Office, 8th Floor.

11. The Appropriate Collective Bargaining Unit—All employees, excluding all new and used car salesmen, service salesmen, office clerical employees, shop clerks, Pick-Up Drivers—Parts, and Pick-up and Deliver Men, and guards, supervisors and professional employees as defined in the Act.

If Notice of Representation Hearing has been issued in this case, the approval of this stipulation by the Regional Director shall constitute withdrawal of the Notice of Representation Hearing heretofore issued.

Employer: General Motors Corporation, Cadillac Motor Division, Los Angeles Branch.

Address: 1076 W. 7th Street & 5151 Wilshire Blvd. Los Angeles.

By: Henry M. Hogan, Con'l Counsel, By Harry S. Benjamin, Attorney.

Dated Executed: July 2, 1957.

Signature: L. A. Gordon, Field Examiner, National Labor Relations Board.

Signature: Henry W. Becker.

Regional Director, National Labor Relations Board:
July 2, 1957.

Name of Organization: Intl. Assn. of Machinists for and in Behalf of Dist. Lodge #94, Local #1186.

Address: 108 [illegible] Street, Los Angeles 14.

By: T. B. Aycock, C. L. Repr.

Case No. 21-RC-4864.

Admitted in Evidence 2-24-66.

GENERAL COUNSEL'S EXHIBIT No. 19-Q.

Cadillac Motor Car Division
General Motors Corporation
5151 Wilshire Boulevard
Los Angeles, California

Name

George Bailey
Gordon L. Baird
Lewis H. Banning
Harry Barson
Thomas D. Bowditch
Francis H. Calhoun
John Cardy, Jr.
Raymond L. Cash
Berrie L. Crowe
Joe W. Edwards
Michael Farenbaugh
James A. Flynn
Robert Q. Fowler
Benjamin F. Galbraith
John V. Girardi
Ralph Green
Lonnie Griffin
Hubert T. Haggard
Robert Handy
Fredrick I. Harms
George H. Harris
Lawrence Henley
Clayton E. Henry
James E. Highducheck
Jack E. Hudson

Name

Richard W. Jamieson
James Lewis
Earl Y. Mc Fall
Bernard Magaram
Andrew Morfin
Edward L. Nosley
Jimmie L. Patterson
Delmar S. Potter
John Ries
Gene Ring
Robert O. Rodrigues
John Sarama
William L. Saye
Harry A. Scarborough
John A. Schuld
David Segal
Cecil M. Shook
John Simmons
Edward J. Steiner
Robert L. Sutherland
George Tamayo
Harry Tuler
Wesley L. White
Lawrence L. Wilson

Cadillac Motor Car Division
General Motors Corporation
1076 W. 7th Street
Los Angeles, California

Name

Jasper W. Allen
Louis B. Amarillas
Valentin L. Arriaga
John Baptista
Adolph A. Bednarek
Russell W. Beecher
James Bilicke
George L. Blackwell
Donald D. Boswell
Clarence J. Brandt
Paul F. Burns
Lucius E. Burrell
Bernard B. Cabral
August E. Clark
Louis R. Coleman
Harry L. Corney, Jr.
Cleo L. Crookham
William C. Dehlike
James J. Danzilio
William Davis
Salvador De la Cueva
Ross J. Deputy
Luverne E. Dickerson
Charles P. Dinisi
Anthony B. Disper
Malcolm B. Doherty
Everet G. Dungan
John P. Edgar
Allen Elder
Pete E. Falchi
Robert Q. Farris
Ray W. Fields
Frank O. Finch
Leo L. Flores
Pete C. Foley
Irlton E. French
Eudell C. Garrett
Joseph L. Gennaway

Name

Ezekiel J. Gibson
Joseph A. Girard
Russell T. Glover
Louis B. Hacquard
Jay Hait
George Harlan
Charles Harris
James Hawkins
Walter E. Hawkins
Ernest N. Healey
Heneley H. Henley
Anthony J. Hercka
George W. Herrin
Frank W. Highducheck
Clarence Hill
Reginald E. Hill
Earl Hoffman
Floyd E. Holland
Christian D. Hoy
Robert F. Hurley
Norris S. Ishkanian
Tibor J. Jacso
Joe C. Jimenez
Ryszard M. Krawczyk
Salvatore La Cavera
Randolph Lanison
Robert G. Laucht, Sr.
Edward O. Lee
Horace G. Le Near
Anthony Lizana
Walter E. Lombard
Pleiades O. Lumpkin
John H. Mc Hurtry
Domenico Marchione
Billy Marshall
Hervin S. Marshall
John A. Martin
Donald W. Masters

Name

Philip Mickool
Lionel L. Moss
Richard J. Nason
Christian K. Neilson
Robert L. Neuhauser
Peter L. Nielsen
James Nosek
Frank Panian
Lester Pearson
James B. Perdew
Ludwig L. Person
Frank J. Postka
Robert G. Peterson
Harry D. Rabinowitz
Henry H. Ruiz
Glenn H. Runkle
C. Earl Russel
Anno Salazar
Lowell E. Scamahorn
Freddie S. Seabrooks
Samuel D. Shelton
James E. Sherman
L. C. Smith
Ray Smith
Wilbert Smith
Frank Snerperger
William D. Taylor
Roy D. Trantham
Claude H. Waggoner
Hubert L. Ward
Ira L. Washington
Dale E. Weaver
Rolf Weinberg
Gilbert Whiteside
Noble Wilson
Mitchell Wogee
Robert W. Woods
Harry D. Yonts

Admitted in Evidence 2-24-66.

GENERAL COUNSEL'S EXHIBIT No. 19-R.

United States of America
National Labor Relations Board

Case No. 21-CC-4864

GENERAL MOTORS CORPORATION, CADIL-
LAC MOTOR CAR DIVISION, LOS AN-
GELES BRANCH

and

INTERNATIONAL ASSOCIATION OF MACHIN-
ISTS, for and in behalf of DISTRICT LODGE
#94, LOCAL #1186, AFL-CIO.

Dated issued July 24, 1957.

- ☐ Consent Agreement
- ☐ Stipulation
- ☐ Board Direction

The undersigned agent of the Regional Director certifies that the results of the tabulation of ballots cast in the election held in the above case, and included on the date indicated above, were as follows:

TALLY OF BALLOTS

1. Approximate number of eligible voters	163
2. Void ballots	0
3. Votes cast for Petition	104
4. Votes cast for	
5. Votes cast for	
6. Votes cast against participating labor organiza- tion(s)	46
7. Valid votes counted (sum of 3, 4, 5, and 6)	150
8. Challenged ballots	0
9. Valid votes counted plus challenged ballots (sum of 7 and 8)	150

1104 *International Assn. of Machinists, etc. vs.*

10. Challenges are (not) sufficient in number to affect the results of the election.
11. A majority of the valid votes counted plus challenged ballots has (~~not~~) been cast for Petitioner.

For the Regional Director
/s/ Carl Abrams

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For Employer
/s/ C. E. Wilkins

For Petitioner
/s/ George Harlan

Admitted in Evidence 2-4-66.

GENERAL COUNSEL'S EXHIBIT No. 19-S.

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

GENERAL MOTORS CORPORATION,
CADILLAC MOTOR CAR DIVISION,
LOS ANGELES BRANCH

and

INTERNATIONAL ASSOCIATION OF MACHIN-
ISTS, for and in behalf of DISTRICT LODGE
#94, LOCAL #1196, AFL-CIO

CERTIFICATION OF REPRESENTATIVES

An election having been conducted in the above mat-
ter by the undersigned Regional Director of the Na-

tional Labor Relations Board in accordance with the Rules and Regulations of the Board; and it appearing from the Tally of Ballots that a collective bargaining representative has been selected; and no objections having been filed to the Tally of Ballots furnished to the parties, or to the conduct of the election, within the time provided therefor;

Pursuant to authority vested in the undersigned by the National Labor Relations Board,

IT IS HEREBY CERTIFIED that
INTERNATIONAL ASSOCIATION OF MACHINISTS, for and in behalf of DISTRICT LODGE #94, LOCAL #1186, AFL-CIO has been designated and selected by a majority of the employees of the above-named Employer, in the unit herein involved, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9(a) of the Act as amended, the said organization is the exclusive representative of all the employees in such unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

Signed at Los Angeles, California, on the 1st day of August, 1957.

On behalf of
NATIONAL LABOR RELATIONS
BOARD
/s/ ILLEGIBLE
Regional Director for Twenty-First
Region
National Labor Relations Board

Admitted in Evidence 2-24-66.

GENERAL COUNSEL'S EXHIBIT No. 19-T.

NEWS FROM CADILLAC

FOR RELEASE IMMEDIATELY

LOS ANGELES—Cadillac Motor Car Division announced today that it is withdrawing from the retail selling of automobiles at the two Cadillac retail branches here. Both branch outlets, at 1076 West Seventh Street and 5151 Wilshire Boulevard, will become independent Cadillac dealerships.

No interruption in Cadillac sales or service is anticipated in the changeover which is expected to be completed by early summer. An announcement as to the identity of the newly franchised dealers will be made as soon as arrangements are final.

The decision to discontinue the branch operations and establish dealership representation was made after a comprehensive year-long study of the entire Los Angeles area market, and it is closely allied with a number of changes and improvements in the Cadillac quality dealer program throughout southern California.

April 9, 1965

Admitted in Evidence 2-24-66.

GENERAL COUNSEL'S EXHIBIT No. 19-U.

Mr. H. Ansell—Represents District Lodge #94—
contracts with Wilshire and 7th Avenue.

I have filed a law suit against Thomas, Ehlers and Cadillac seeking to compel arbitration against all of you people—whether the existing labor agreements are still in effect after the sales to the franchised dealers.

I am going to the Superior Court of Los Angeles at 2:45 P.M. Los Angeles time to seek a temporary injunction, which if granted, would compel Ehlers and Thomas to reinstate all of the employes to their positions until the arbitration has been completed.

The injunction is against Thomas & Ehlers but I thought I would give Cadillac the courtesy of a phone call.

Attorneys for Ehlers and Thomas are going to Dept. 65, Los Angeles Superior Court to oppose the injunction.

Dep. 65
Los Angeles Superior Court
Los Angeles County Court House
First and Grand Streets

Admitted in Evidence 2-24-66.

GENERAL COUNSEL'S EXHIBIT No. 20-A.

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Case No. 21-RC-5414

GENERAL MOTORS CORPORATION CADILLAC MOTOR CAR DIVISION

and

AUTOMOTIVE, MARINE, PRODUCTION FINISHERS, EQUIPMENT MAINTENANCE AND PUBLIC SERVICE PAINTERS, LOCAL UNION 1798, BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, AFL-CIO

CERTIFICATION OF REPRESENTATIVE

An election having been conducted in the above matter by the undersigned Regional Director of the National Labor Relations Board in accordance with the Rules and Regulations of the Board; and it appearing from the Tally of Ballots that a collective bargaining representative has been selected; and no objections having been filed to the Tally of Ballots furnished to the parties, or to the conduct of the election, within the time provided therefor;

Pursuant to authority vested in the undersigned by the National Labor Relations Board,

IT IS HEREBY CERTIFIED that
AUTOMOTIVE, MARINE, PRODUCTION FINISHERS, EQUIPMENT MAINTENANCE AND PUBLIC SERVICE PAINTERS, LOCAL UNION 1798, BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA AFL-CIO

has been designated and selected by a majority of the employees of the above-named Employer, in the unit herein involved, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9 (a) of the Act as amended, the said organization is the exclusive representative of all the employees in such unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

Signed at Los Angeles, California, on the 6th day of November, 1958.

On behalf of
NATIONAL LABOR RELATIONS
BOARD
/s/ RALPH E. KENNEDY
Regional Director for
Twnty-First Region
National Labor Relations Board

Admitted in Evidence 2-24-66.

GENERAL COUNSEL'S EXHIBIT No. 20-B.

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

STIPULATION FOR CERTIFICATION UPON
CONSENT ELECTION

(R Cases)

The undersigned labor organization(s) (herein called the union(s)) claim(s) to represent employees of the undersigned employer (herein called the employer), and the undersigned parties desire that the question concerning the representation of said employees which exists by virtue of said claim shall be resolved by an election by secret ballot. Therefore, the said parties, subject to the approval of the Regional Director for the National Labor Relations Board (herein called the Regional Director), HEREBY AGREE AND STIPULATE AS FOLLOWS:

1. SECRET BALLOT—An election by secret ballot shall be conducted under the supervision of the

Regional Director, among the employees in the Unit defined below, at the indicated time and place, to determine whether or not the employees desire to be represented by (one of) the Union(s). Said election shall be held in accordance with the National Labor Relations Act, the Board's Rules and Regulations, and the customary procedures and policies of the Board.

2. ELIGIBLE VOTERS—The eligible voters shall be those employees included within the Unit described below, who were employed during the payroll period indicated below, including employees who did not work during said payroll period because they were ill or on vacation or temporarily laid off, and employees in the military services of the United States who appear in person at the polls, but excluding any employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election and any employees on strike who are not entitled to reinstatement. At a date fixed by the Regional Director, the Employer will furnish to the Regional Director an accurate list of all the eligible voters, together with a list of the employees, if any, specifically excluded from eligibility.

3. NOTICES OF ELECTION—The Regional Director shall prepare a Notice of Election and supply copies to the parties describing the manner and conduct of the election to be held and incorporating therein a sample ballot. The Employer, upon the request of and at a time designated by the Regional Director,

will post such Notice of Election at conspicuous and usual posting places easily accessible to the eligible voters.

4. OBSERVERS—Each party hereto will be allowed to station an equal number of authorized observers, selected from among the nonsupervisory employees of the Employer, at the polling places during the election to assist in its conduct, to challenge the eligibility of voters, and to verify the tally. As soon after the election as feasible, the votes shall be counted and tabulated by the Regional Director, or his agent or agents. Upon the conclusion of the counting, the Regional Director shall furnish a Tally of Ballots to each of the parties. All Union observers shall be non-supervisory employees of the Employer in the bargaining unit described below.

5. POST-ELECTION AND RUN-OFF PROCEDURE—All procedure subsequent to the conclusion c—counting ballots shall be in conformity with the Board's Rules and Regulations.

6. RECORD—The record in this case shall be governed by the appropriate provisions of the Board's Rules and Regulations and shall include this stipulation. Hearing and notice thereof, Direction of Election, and the making of Findings of Fact and Conclusions of Law by the Board prior to the election are hereby expressly waived.

7. COMMERCE—The Employer is engaged in commerce within the meaning of Section 2 (6) of the

National Labor Relations Act, and a question affecting commerce has arisen concerning the representation of employees within the meaning of Section 9(c).

General Motors Corporation, Cadillac Motor Car Division, Los Angeles Branch, during the past 12-month period, has received at its Los Angeles location, goods valued in excess of \$1,000,000.00 from points located outside the State of California.

8. NAMES ON BALLOT—In the event more than one labor organization is signatory to this agreement, the choices on the ballot will appear in the wording indicated below and in the order enumerated below, reading from left to right on the ballot:

9. PAYROLL PERIOD FOR ELIGIBILITY—Period ending September 28, 1958.

10. DATE, HOURS, AND PLACE OF ELECTION—Date: To be determined by Regional Director after consulting with employer.

Times and Places: 10:30-10:45 A.M., 5151 Wilshire Blvd., Second Floor Conference Room; 11:30-11:45 A.M., 1076 W. 7th Street, Facility Maintenance Room-8th Floor.

11. THE APPROPRIATE COLLECTIVE BARGAINING UNIT—All employees employed on the classification "painter" excluding all foremen and other supervisors within the meaning of the amended Act; all guards and professional employees within the meaning of the amended Act; all office clerical and plant clerical employees and all other employees not specifically included in the unit.

If Notice of Representation Hearing has been issued in this case, the approval of this stipulation by the Regional Director shall constitute withdrawal of the Notice of Representation Hearing heretofore issued.

Employer General Motors Corporation, Cadillac Motor Car Division.

Address: 5151 Wilshire Blvd., and 1076 W. 7th Street, Los Angeles, California.

By Henry M. Hogan, its attorney.

Date Executed: K. D. Mann and H. S. Benjamin, Jr., of Counsel—October 17, 1958.

/s/ K. D. Mann

/s/ H. S. Benjamin, Jr.

Name of Organization: Automotive Marine, Production Finishers, Equipment Maintenance and Public Service Painters, Local Union 1798, Brotherhood of Painters and Decorators and Paperhangers of America, AFL-CIO.

Address: 7317 San Pedro Street, Los Angeles 3, California.

Case 21-RC-5414

Admitted in Evidence 2-24-66.

RESPONDENT THOMAS' EXHIBIT No. 1.

[Letterhead]

Executives, Department Heads, and Foremen on roll
June 30, 1965

<u>Name</u>	<u>Position</u>
La Rue C. Thomas	President
Kenneth R. Thomas	Secretary & Treasurer
Eugene Estep	General Manager
Margaret H. Weller	Comptroller
Harry T. Sadler	General Sales Manager
James B. Rollins	New Car Sales Manager
Dale L. Rowe	General Used Car Manager
Wesley A. Uglow	Used Car Manager
Loyd E. Coats	General Service Manager
William T. Hinman	Service Manager
Sigurd A. Erickson	Parts Department Manager
Edward R. Jones	Assistant Parts Manager
Joseph R. Toombs	Business Manager
Edward W. Dearborn	Credit Manager
Raymond R. Jiron	Foreman—7 & 8
Bud L. Holderman	Foreman—6
Luverne E. Dickerson	Foreman—3
Roger B. Scott	Assistant Foreman—3
William C. Iest	Foreman—Annex
Philip J. Mickool	Foreman—Basement
Joe M. Drew	Foreman—Building Maintenance

Admitted in Evidence 2-25-66.

RESPONDENT EHLERS' EXHIBIT No. 1.

Lou Ehlers Cadillac
5151 Wilshire Blvd.
Los Angeles

PHYSICAL ASSETS PURCHASED AS OF JUNE 1, 1965 FROM GENERAL MOTORS CORP. UNDER BILL OF SALE

"Fixed assets—furniture, fixtures, machinery and shop equipment, service cars			\$ 25,000.00
Special tools			1,500.00
Misc. items			<u>1,500.00</u>
TOTAL CAPITAL ITEMS			\$ 28,000.00
Company cars (3)	\$15,965.20		
Used cars (13)	<u>31,450.00</u>	\$47,415.20	
Cadillac repair parts		71,800.53	
Cadillac accessories		2,869.20	
Gasoline, oil, grease, tires, tubes, paint, undercoating		<u>4,174.29</u>	
TOTAL INVENTORY ITEMS			<u>126,339.22</u>
TOTAL			\$154,339.22
(Sales tax at 4% paid on capital items			<u>1,120.00)</u>
(Total amount paid General Motors Corp.			\$155,459.22)

Admitted in Evidence 2-24-66.

RESPONDENT EHLERS' EXHIBIT No. 2.

[Letterhead]

Mr. L. W. Ehlers
Lou Ehlers, Inc.
1325 E. Capital Drive
Milwaukee, Wisconsin

Dear Lou:

We have just completed a comparison review of registered customer complaints during the 1964 calendar year and I want to compliment you and all of your fine people for an exceptional performance. You have enjoyed a very low incident of dissatisfied customers per car sold. To say it more positively, you have continued to build a large foundation of happy, satisfied Buick owners. I know that this requires conscientious effort and a planned program of owner satisfaction. Through your leadership, not only in Milwaukee but also at your dealership in Madison, you have inspired your Department Managers and in fact, all of your employees, to be sure that every Lou Ehlers customer is a happy Buick customer. We thank you most sincerely and we know that this type operation can lead only to constant growth and success.

Very truly yours,

/s/ L. O. GLASGOW

L. O. Glasgow

Zone Manager

January 14, 1965

LOG:lrn

Admitted in Evidence 2-24-66.

RESPONDENT EHLERS' EXHIBIT No. 3.

Automobile Dealers—New Cars

(Cont'd)

BUICK AUTHORIZED SALES & SERVICE (Cont'd)

DEALER (Cont'd)
LOS ANGELES (Cont'd)

IRV WHITE BUICK
250 S La Brea. 933-8121

MCENCH-DAVIS BUICK
7915 S Vermont. 753-3201

RELFLOWER

PEARS BROS BUICK
15734 S Bellflower Bl Bell. 925-6611

BEVERLY HILLS

IRV WHITE BUICK
250 S La Brea. 275-4321

BURBANK

BARNETT BUICK
524 S San Fernando Brb. 849-2291

COMPTON

CLARK HARRY C INC
150 S Long Ben Compton. 636-1848

COPINA

REYNOLDS BUICK INC
345 N Citrus Av Yucca. 966-4461

CULVER CITY

MURPHY BILL BUICK INC
9099 Washn Bl CC. 870-1151

DOVNEY

SIMPSON BUICK CO
Dolan & Firestone Dny. 773-4353

GLENDALE

COLONIAL BUICK
143 S Glendale Glnd. 245-6611

HOLLYWOOD

SPEIGHT BUICK CO
6709 Sta Monica. 467-3101

INGLEWOOD

SPARKING BUICK
Since 1910
217 N La Brea Ing. 678-4321

LONG BEACH

BOULEVARD BUICK-JAGUAR
1681 Long Bch Bl LB. 775-6156

MANHATTAN BEACH

BUTLER BUICK
400 S Sepulveda ManBch. 772-1431

NORTH HOLLYWOOD

TYRRELL HARVEY BUICK
4645 Lankersham NH. 877-5361
4645 Lankersham NH. 766-5211

Tyrrell Harvey Buick
4645 Lankersham NH. 984-3430

PASADENA

KRELL BUICK INC
1095 E Colorado. 681-6927

SAN FERNANDO

RUEFF WALTER INC BUICK
710 San Fernando Rd Sfer. 361-8655

SANTA MONICA

Cummings-Buick Inc
1501 Sta Monica Bl
Santa Monica. 395-0986

VAN NUYS

HAMILTON BONES BUICK CO
Open 7 Days A Week. Mon to Fri
Till 10PM. Sat & Sun Till 6PM
Service Dept Mon & Wed Till 9PM
Van Nuys Blvd at Hatteras
5747 Van Nuys Vn. 873-1177

WESTWOOD VILLAGE

LAUSEN BUICK CO
At Santa Monica Blvd
1656 S Sepulveda WLA. 272-4319

WILMINGTON

Avalon Motor Co
900 W Anaheim Wilm. 775-3047

WHOLESALE ONLY

BUICK MOTOR DIV. GENL MOTORS
CCRP 14140 N. 100th St. VN. 872-1234

BURBANK CHRYSLER PLYMOUTH

611 S San Fernando Brb. 849-4664
(Please See Advertisement Page 160)

BURBANK IMPORTS

Recruited-Prunot-Triumph-Jaguar
633 S San Fernando Brb. 849-1211

BURBANK MOTORS

On Olive at Lake
1 Blk W of Golden State Fwy
200 W Olive Brb. 849-7378

Burbank Sports Car Center
Main Oic 317 N Victory Brb. 849-7256
Used Car Dept

444 S San Fernando Brb. 849-6083

BURCH DILL OLDSMOBILE

1147 W Main Alh. 263-6665

Burns Mel Ford
2000 Long Bch Bl LB. 636-7247

Butler Buick
400 S Sepulveda ManBch. 772-1431

C PETRALIA FORD

A City Block of Ford Sales & Service
1720 S Western. 735-1071
(Please See Advertisement Page 154)

Cabrillo Motors
1850 S Pacific Spd. 775-1935

CADILLAC MOTOR CAR DIV OF

GENERAL MOTORS CORP
Factory Branches-Sales & Service

5151 Wilshire. 931-1871
1076 W 7th. 629-4789

CADILLAC SALES & SERVICE

"STANDARD

OF THE

WORLD"

"WHERE TO BUY IT"

FACTORY BRANCH

CADILLAC MOTOR CAR DIV OF
GENERAL MOTORS CORP

Sales & Service
5151 Wilshire. 931-1871
1076 W 7th. 629-4789

DEALER

ALHAMBRA

ALLEN NEWLEY CADILLAC
SALES & LEASING

Cordova & Main 1/2 Mi East of Garfield
601 E Main Alh. 269-5203

DOVNEY

SPREEN BOB CADILLAC
Open Sundays
10700 Studebaker Rd Dny. 868-9931

GLENDALE

MODERN MOTORS CO
1225 S Brand Glnd. 245-8533

HERMOSA BEACH

MORAN RONALD E INC
25 Pacific Cst Hwy HermBch. 772-1291

HOLLYWOOD

DIXON CADILLAC 1440 Vine. 464-7101

INGLEWOOD

BUFFINGTON MOTORS
200 N La Brea Ing. 678-6211

LONG BEACH

RIDINGS MOTORS
1501 Long Bch LB. 775-2424

(Continued Next Column)

Find it in the "Classified."

CADILLAC SALES & SERV. (Cont'd)

DEALER (Cont'd)
LOS ANGELES

CADILLAC MOTOR CAR DIV OF

GENERAL MOTORS CORP
Sales & Service

5151 Wilshire. 931-1871
1076 W 7th. 629-4789

NORTHridge

NEILL LEHR CADILLAC INC
8420 Reseda Nor. 873-5565

PASADENA

SYMES JACK MOTORS
CADILLAC INC

655 E Green Pas. 681-5244

SAN FERNANDO

NEILL LEHR CADILLAC
1212 San Fernando Rd

San Fernando. 365-3151

SAN PEDRO

THOMAS CECIL L & SONS
1030 Pac Cst Hwy HarCly. 775-6611

(Continued Next Column)

CADILLAC SALES & SERVICE (Cont'd)

DEALER (Cont'd)
SANTA MONICA

MARTIN MOTORS CADILLAC

& OLDSMOBILE AGCY
1115 Wilshire Santa Monica. 870-7071

SHERMAN OAKS

CASA DE CADILLAC
14401 Ventura

Sherman Oaks. 901-2000

WEST LOS ANGELES

HILLCREST MOTOR CO
9230 Wilshire. 272-3234

CALDWELL'S INC

Corner of Santa Fe Ave & Compton Blvd
Auth Dir for Simra & Studebaker

736 E Compton Cal. 636-1588

Canoga Chrysler-Plymouth Inc
21422 Roscoe Cpk. 873-4455

Canoga Park Motors
21520 Roscoe Cpk. 873-4005

Carl's Motor Co Inc
1200 N Avalon Wilm. 775-1897



CHECKER

SEDANS
STATION WAGONS
AERO BUSES
TAXI CABS
LIMOUSINES

Authorized SALES & SERVICE

THE PROVEN "BUILT TO LAST" CAR

Your Friend at the Factory

CHECKER CALIFORNIA SALES CORP.

FACTORY BRANCH



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MERCEDES-BENZ

"WORLD'S FINEST MOTOR CAR"

ALL MODELS AVAILABLE

SPECIALISTS IN

EUROPEAN DELIVERY



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in HOLLYWOOD

Clarence Dixon



CADILLAC

Authorized SALES & SERVICE

Showroom

1440 VINE

464-7101

Service

1670 N. SYCAMORE

CHECKER



SALES - PART

678-2

SOUTHERN CALIFORNIA

127 W. MANCHESTER

NATIONAL LABOR RELATIONS BOARD

Docket No. 3127-53-2 OFFICIAL EXHIBIT NO. 1-ENCLARS 3

Disposition

Identified

Received

Rejected

In the matter of THOMAS CADILLAC

Date 2-24-66 Witness ENCLARS Reporter GJY

No. Pages

BEST COPY AVAILABLE
from the original bound volume

RESPONDENT EHLERS' EXHIBIT No. 4.

Lou Ehlers Cadillac
5151 Wilshire Blvd.
Los Angeles

NUMBER OF EMPLOYEES

	June, 1965		Nov., 1965	
	LEC	(GM)	LEC	(GM)
Management & Supervission	11	(5)	12	(3)
New Car Salesmen	12#	(12)	11	(10)
Used Car Salesmen	3#	(3)	3	(2)
Office & others	26	(23)	27	(12)
Shop	35	(11)	40	(9)
	—	—	—	—
	87	(54)	93	(36)

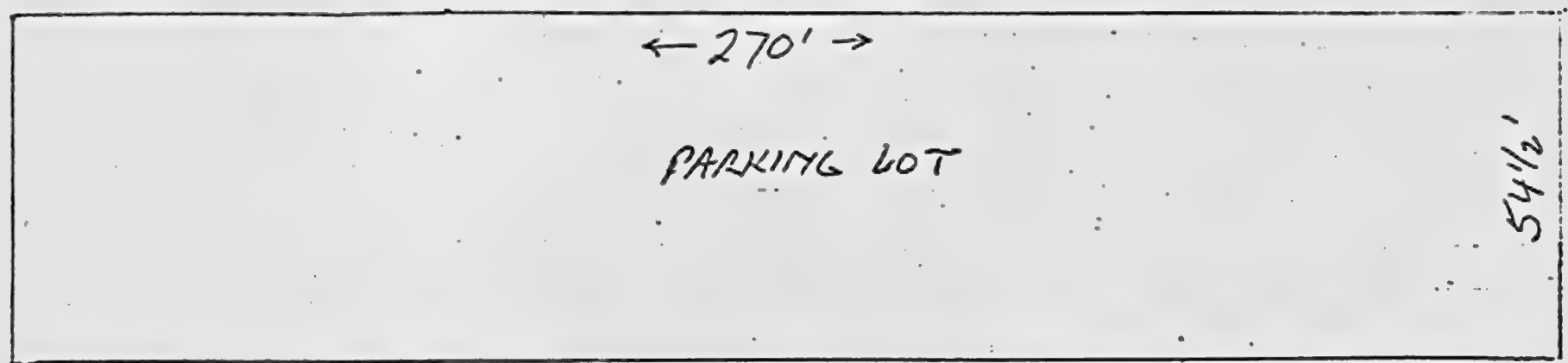
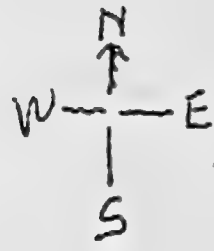
Not including termination first week: 6 new and 1 used car salesman.

Column headed "(GM)" shows number of Lou Ehlers Cadillac employees in the "LEC" column who were employed by Cadillac Motor Car Division at 5151 Wilshire Blvd. in May, 1965.

Admitted in Evidence 2-24-66.

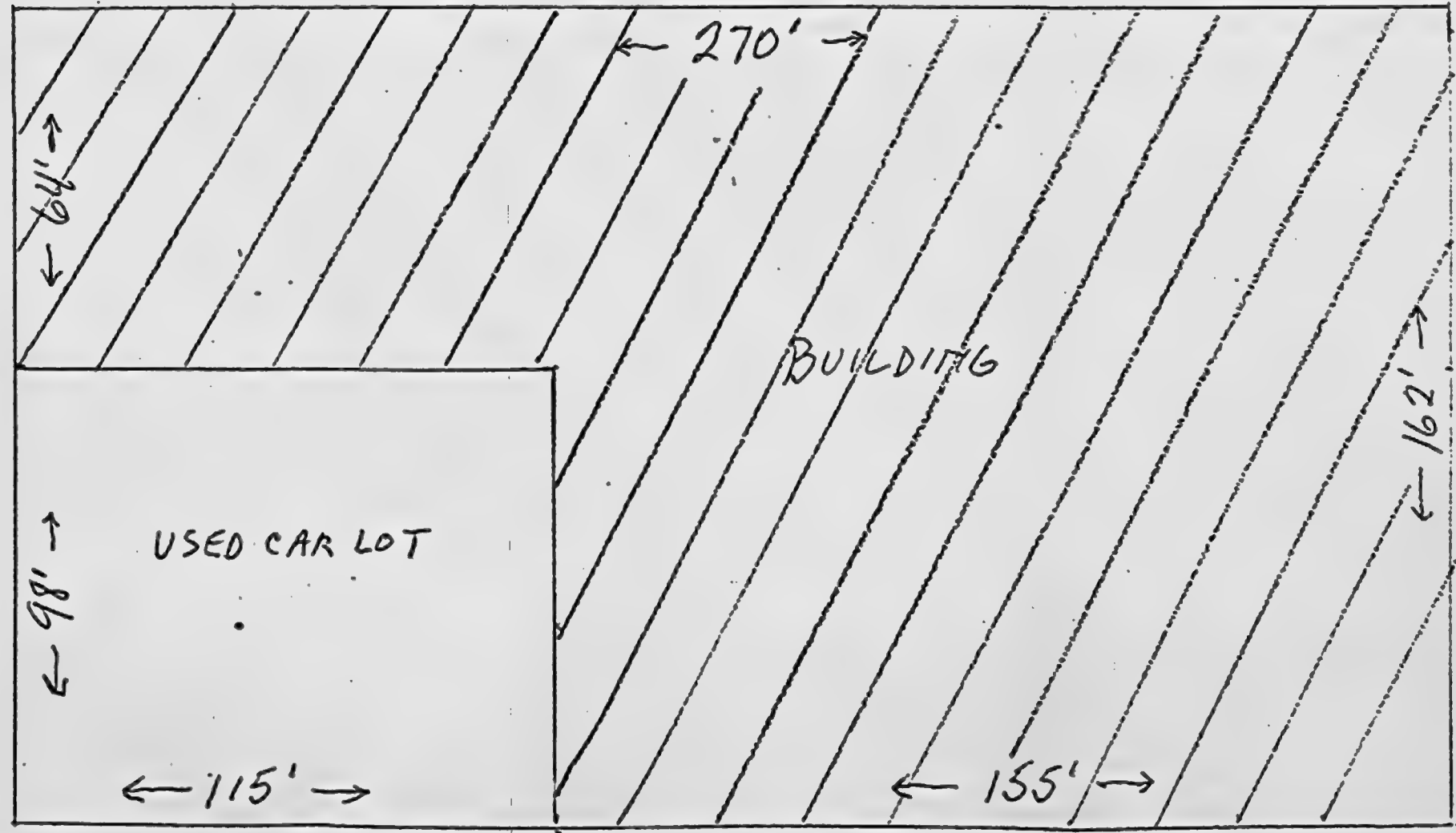
RESPONDENT EHLERS' EXHIBIT No. 5.

(See opposite page)



CARLING WAY

SYCAMORE



ORANGE DRIVE

WILSHIRE BLVD

LOU EHLERS CADILLAC

RESPONDENT EHLERS' EXHIBIT No. 9.

Cadillac Motor Car Division

Los Angeles Retail Branch

May, 1965

	<u>Total</u>	<u>At Wilshire</u>
Shop unit employees	117	42
New car salesmen	39	19
Used car salesmen	14	5
Office, Supervision, etc.	109	34
	<u>279</u>	<u>100</u>

Admitted in Evidence 2-25-66.

RESPONDENT EHLERS' EXHIBIT No. 12.

AFFIDAVIT OF RICHARD W. LUND

State of California, County of Los Angeles—ss.

I, RICHARD W. LUND, being first duly sworn,
depose and state that:

1. I am, and have been since 1938, an attorney and member of the Bar of the State of California. I have been with the law firm of Latham & Watkins since 1938 and have been a partner therein since 1945.

2. For over 25 years I have specialized in the field of labor law and labor relations. I have participated during such period in the negotiation of hundreds of collective bargaining agreements on behalf of employes.

3. In my experience, the contract demands made by unions to the employers and the settlement terms of such contracts are influenced to a considerable extent

by the nature of the employer, such as whether it is a large or small employer, a national company with a number of facilities or branches or a local company only, a new or long established business, the financial condition of the employer, the attitude of supervision and management toward collective bargaining and unions in general and the particular union and so-called union security, and so on. By the same token, the position of the employer on contract terms is influenced to a considerable extent by the nature of the union with which it is negotiating, such as whether it is a new or long established union, the demonstrated responsibility of the union and its officials and its record of work stoppages, the reputation of its officials relative to Communist affiliations or leanings or relative to use of strong-arm methods of racketeering techniques, the criminal record, if any, of the officials, the democracy practiced within the union, and so on. Frequently, many of the terms and conditions of contracts are changed, in renewal contract negotiations, based solely on a better knowledge on the part of the union officials of the employer and what it stands for or based solely on a better knowledge on the part of the employer of the union and its officials and what they stand for, or based solely on a change in management or supervision of the employer or of officials of the union.

* * * * *

Admitted in Evidence 2-25-66.

RESPONDENT EHLERS' EXHIBIT No. 15.

EXCERPTS FROM DEPOSITION OF
BERNARD J. HUBERT

(Taken on July 21, 1965 (through page 84) and on August 8, 1965 in Los Angeles Superior Court Case No. 863,284 entitled, briefly, Machinists Union vs. Lou Ehlers Cadillac.)

A. Normally, we had these labor-management meetings every month. [page 72, lines 8-9]

Q. Who attended these monthly labor-management meetings?

A. Well, normally it was myself and whoever of the committee happened to be there, that was available at that time, unless somebody was sick or on vacation. And the branch manager, Mr. Fazackerly, and Tom Cliff, the controller.

Q. Who was the branch manager at Wilshire branch?

A. Jim Herndon, but he never did participate.

Q. He never attended?

A. No, he never did participate. [page 72, lines 15-24]

Q. The contract negotiations you had with General Motors, these were directed and controlled by Mr. Pais on the management side, I take it?

A. Yes. [page 73, lines 11-14]

Q. At these labor-management meetings and these discussions of these problems, did the local management indicate that they would have to clear certain matters with Detroit or Pais?

A. Not always. Depending on what the grievance was, or the nature of it. Sometimes they would have

to supposedly get an answer, if you want to call it, from Joe Pais. Other times there were problems were solved that we had the answer locally. [page 74, lines 6-14]

Q. It is true, is it not, Mr. Hubert, that at no time in 1965 did you or any representative of your union or the Painters Union, to your knowledge, ask or demand of or propose to GM that any agreement they make with any proposed dealer contain a provision that the dealer agree to assume the union contract?

A. No, there was no—we never made a proposal like that. [page 103, lines 21-26, page 104, lines 1-2]

Q. It is true then, is it not, that neither you nor any other representative of the machinists or the Painters Union demanded or proposed, requested or suggested to General Motors that in their agreement with any proposed dealer, between General Motors and the dealer, they make the dealer agree to hire the employees of GM?

A. None that I recall. [page 106, lines 2-8]
Admitted in Evidence 2-25-66.

RESPONDENT EHLERS' EXHIBIT No. 16.

AFFIDAVIT OF A. W. LONG

State of Michigan, County of Wayne—ss.

A. M. LONG, being first duly sworn, deposes and states as follows:

1. I am now, and have continuously been for some time passed, Assistant Comptroller of Cadillac Motor Car Division of General Motors Corporation (hereinafter referred to as "Cadillac"). As such I have access

to the books and records of Cadillac and am familiar with the matters hereinafter stated.

2. Prior to June of 1965, Cadillac operated a retail sales and service agency in Los Angeles, California, known as the Los Angeles branch. The operations of the Los Angeles branch were carried on at two locations, 5151 Wilshire Boulevard and 1076 West Seventh Street. The books and records for the Los Angeles branch were maintained at the 1076 West Seventh Street location. For the most part, such books and records did not segregate the operations at the two locations. Hence the information hereinafter stated is with reference to the entire Los Angeles branch, and relates, unless otherwise stated, to the period immediately prior to June of 1965.

3. Cadillac maintained three bank accounts, as follows:

Security First National Bank, Seventh and Witmer, Los Angeles, Contingent Fund Account.

Security First National Bank, 561 South Spring Street, Los Angeles, Payroll Account.

Security First National Bank, Seventh and Witmer, Los Angeles, Savings Bond Account.

4. Cadillac maintained the following insurance policies:

(a) Fire, buildings, with Factory Insurance Association.

(b) Fire, building contents, with St. Paul Fire and Marine Insurance Co.

(c) Plate glass, with Royal Indemnity Co.

(d) Boiler, with Hartford Steam Boiler Inspection & Insurance Co.

(e) General liability and automobile liability, with Royal Indemnity Co.

(f) Workmen's compensation, with Royal Indemnity Co.

(g) Employee group life, with Metropolitan Life Insurance Co.

(h) Employee group hospital and medical, with Blue Cross and with the Kaiser Foundation Health Plan.

5. Cadillac used doctors Frees, Elmquist, and Staff, 629 South Westlake, Los Angeles and Dr. J. Yonchar, 4550 Wilshire, Los Angeles on an outside consultant basis for pre-employment physicals and on-the-job injuries.

6. Cadillac contracted its janitorial maintenance work to American Building Maintenance Co. and had contracts with a number of firms furnishing services or supplies, including the following: Addressograph, Marikan Waste Paper Co., Underwood, Pinkerton's, Inc., Burroughs, Electrical Products Division of Federal Sign & Signal Corp., International Business Machines, City Linen Service, Flood Lite Service, Inc., and Athletic Club Flower Shop.

7. Under the California state unemployment insurance program, the unemployment compensation benefit payments were 0.96% of taxable payroll and the unemployment compensation tax rate was 2.17% of taxable payroll.

8. Upon the termination of the operation of the Los Angeles branch at the end of May of 1965: (a) all hourly employees with seniority were paid their vacation, paid absence allowances, prorated to the end of

May of 1965 and holiday pay for May 31, 1965; (b) all hourly employees eligible for retirement under the General Motors Retirement Program were retired, effective June 1, 1965, including those named in Exhibit "A" attached hereto; (c) a number of hourly employees elected to withdraw their severance pay under the General Motors Income Security Plan and were paid the same, including those named in Exhibit "B" attached hereto. All the employees named in the attached exhibits were employed at the 5151 Wilshire Boulevard location within the bargaining unit represented by the Machinists and Painters unions.

9. Among the assets of the Los Angeles branch of Cadillac which were not sold to either Lou Ehlers or Thomas Cadillac were the following:

(a) Complete used car inventory. The Los Angeles branch average used car inventory through April 1965 was 127 units. Nineteen of such used cars were purchased in total by Lou Ehlers and Thomas Cadillac. These were the number of used cars remaining at the end of May 1965, after Cadillac had sold all its other used cars to other purchasers.

(b) Warranty parts and Labor pending credit in the amount of \$32,272.00.

(c) Wholesale Compensation (this covers compensation for parts not sold to either Lou Ehlers or Thomas Cadillac) in the amount of \$4,834.00.

(d) Books, files, and records.

(e) Land & Buildings at Thomas Cadillac location.

10. Among the debts and contractual obligations of Cadillac which were not assumed or undertaken by

either Lou Ehlers or Thomas Cadillac were the following:

(a) Obligations arising from financing contracts on all cars sold through May 1965. Through December 31, 1965, Cadillac reimbursed the United California Bank and General Motors Acceptance Corporation a total of \$68,601.00 for 24 automobile repossessions. Upon the disposal of these units, Cadillac sustained a loss of \$19,104.00.

(b) Dealer reserve obligations. Through December 1965, Cadillac was charged with a \$5,267.00 loss by the banks and General Motors Acceptance Corporation for repossessions and prepayment made on installment contracts.

(c) Bad debt expense. Fraudulent used car purchase in the amount of \$4,850.00. Bad debts on service customers in the amount of \$229.000.

(d) Responsibility for Tourist Service Expense and comeback work on cars sold through May 1965.

(e) Los Angeles City Business Taxes of \$10,330.00.

(f) Used car warranty expense on cars sold through May 1965.

(g) Escheatable property liability of \$650.00 through May 1965.

(h) Liability under miscellaneous vendors' contracts, including those with the companies listed in Paragraph 6 above. None of such contracts were assigned to Lou Ehlers.

(i) Unpaid invoices incurred prior to the end of May 1965. These were set up as a liability and

paid by Cadillac in June 1965, amounting to \$11,884.00.

(j) Medical examination fees; miscellaneous fees, penalties, and dues; utility and service charges.

(k) Payroll taxes.

/s/ A. M. Long
A. M. Long

Subscribed and sworn to before me this 9th day of February 1966.

/s/ W. H. AUSTIN

Notary Public in and for the above State and County.

W. H. AUSTIN, Notary Public

Wayne County, Michigan

My Commission Expires June 17, 1966.

EXHIBIT "A"

List of employees of Cadillac employed at the 5151 Wilshire Boulevard location who were retired as of June 1, 1965 under the General Motors Retirement Plan:

Gordon L. Baird

Harry Barson

Francis H. Calhoun

Hubert T. Haggard

Frederick I. Harms

John Sarama

David Segal

John Simons

George Smith

Edward J. Steiner

Robert L. Sutherland

EXHIBIT "B"

The following employees of Cadillac at the 5151 Wilshire Boulevard location were paid, subsequent to May of 1965, the balance in their respective accounts under the General Motors Income Security Plan in the amounts set opposite their names:

Bailey, George	\$1,125.01
Baird, Gordon L.	1,248.83
Barson, Harry	1,238.51
Burt, Ulysses, Jr.	681.51
Burt, Joseph T.	282.27
Calhoun, Francis H.	1,190.27
Callaway, William H.	117.40
Cecil, Ronald P.	1,139.05
Conrad, Dean	586.09
Crowe, Berrie L.	1,279.25
Danzilio, James J.	1,050.61
Griffin, Lonnie	1,169.95
Grillo, Eugene A.	192.42
Haggard, Hubert T.	1,144.33
Hamilton, Willie	1,348.98
Harms, Frederick I.	1,205.35
Harris, George H.	1,333.01
Haverly, Edward J.	128.15
Holland, Floyd E.	428.93
Hudson, Jack E.	1,200.24
Jackson, Floyd C., Jr.	545.36
Mosley, Edward L.	1,140.32
Nelson, Donald E.	787.77
Peterson, Robert G.	1,090.04
Sarama, John	1,197.37
Scarborough, Harry A.	1,162.40
Segal, David	1,237.05

Simmons, John	1,223.10
Smith, George	1,319.29
Steiner, Edward J.	1,200.67
Sutherland, Robert L.	1,380.89

Admitted in Evidence 2-25-66.

RESPONDENT EHLERS' EXHIBIT No. 17.

AFFIDAVIT OF RICHARD W. LUND

State of California, County of Los Angeles—ss.

I, RICHARD W. LUND, being first duly sworn, depose and state that:

1. The law firm of Latham & Watkins, of which I am a member, has been retained since April 27, 1965 by Lou Ehlers, and later by Lou Ehlers Cadillac, to represent him and it in certain business matters.

2. On Thursday, May 20, 1965, I received a telephone call from attorney Herbert Ansell who stated he represented I.A.M. District Council 94 and that it, together with the Painters Union, had a contract with General Motors Cadillac Division, and that he had been advised Ehlers was going to take over the Wilshire branch of G.M. He stated that he thought it advisable that there should be a meeting to discuss application of the G.M. union contract to Ehlers and possible recognition by Ehlers of the unions as bargaining representatives. In reply, I stated to Ansell that I did not think the G.M. contract would apply to Ehlers and that he would not consider himself bound by it, that any question of recognition was premature because Ehlers had not yet hired his work force, and that under the circumstances

I did not see the point of having any meeting at that time. Ansell did not again suggest, in this conversation or any later one, that there should be a meeting, and at no time did I state to Ansell (or any other representative of the Machinists) that Ehlers or I would refuse to meet with him or the I.A.M.

3. On the same day, or within a couple of days, I talked to Lou Ehlers and told him, briefly, of the substance of the conversation.

4. Over the weekend or on Monday, May 24th, Lou Ehlers advised me of having received a letter from Ansell on Saturday and read it to me.

5. On Tuesday, May 25th, Ansell again telephoned me. He asked if there had been any change in Ehlers' position. In reply, I stated [as I had done] that I had checked with Ehlers since his first call and [as Ehlers had confirmed to me] that it was still Ehlers' firm position that he was not bound by the G.M. union contract, and that I had not called him in reply to his letter of May 19th to Ehlers because I had assumed that my phone conversation with him on May 20th had been accepted by him as my reply.

6. On Thursday, May 27, 1965, I returned a telephone call to Leo Geffner who had called me while I was out of the office or in conference. I stated to Geffner that I was returning his call. Geffner said that he represented the Painters Union that was a party to a G.M. contract for the local Cadillac agency, and asked if it was true in accordance with reports he had heard that Ehlers was not going to start his operation until June 7th. In reply, I stated that it was my belief Ehlers would start June 1st. Geffner then asked what the situation was as to the G.M. shop men to be hired. I stated

that as of the moment it was uncertain which of the G.M. men would be hired. Geffner thanked me and asked that I advise him if I learned of any change in the situation.

7. At no time did Ansell (or any other representative of the Machinists) state to me that the Machinists (or District Lodge 94 or Local 1186) represented a majority of the shop employees (or any employee group) of Ehlers or was bargaining agent for Ehlers' shop employees (or any employee group) nor did he demand or ask recognition by Ehlers of the Machinists (or District Lodge 94 or Local 1186) as bargaining representative of his shop employees or of any other group of Ehlers' employees. At no time did Geffner (or any other representative of Painters Local 1798) state to me that the Painters Local 1798 represented a majority of the painters (or any employee group) employed by Ehlers or was bargaining agent for Ehlers' painters (or any employee group) nor did he demand or ask recognition by Ehlers of Painters Local 1798 as bargaining representative of his painters or of any other group of Ehlers' employees.

/s/ By RICHARD W. LUND
Richard W. Lund

Subscribed and sworn to before me this 18th day of February, 1966.

/s/ By ZOE E. PORTER
Notary Public in and for the County of
Los Angeles, State of California.
Zoe E. Porter
My Commission Expires Apr. 30, 1969

Admitted in Evidence 2-25-66.

RESPONDENT EHLERS' EXHIBIT No. 18.
AFFIDAVIT OF RICHARD W. LUND

State of California, County of Los Angeles—ss.

I, RICHARD W. LUND, being first duly sworn,
depose and state:

1. Following the receipt by Lou Ehlers on May 22, 1965 of the letter dated May 19, 1965 from Herbert Ansell and my telephone calls of May 20th, May 25th, and May 27th, 1965 with Ansell and Leo Geffner and prior to June 1, 1965, Lou Ehlers and I, as his counsel, determined that if the Machinists or Painters union made a claim on or after June 1, 1965 that a majority of Ehlers' shop employees (or any group of them) had designated such union to represent them and/or that such union was the bargaining representative for Ehlers' shop employees (or any group of them), I was to prepare and file in Ehlers' name a representation petition with the National Labor Relations Board. Neither union ever made any such claim unless the letters of June 3rd, June 7th, and/or June 8th, 1965 could be so construed and I did not consider that they fairly could be so construed.

2. In any event, notice of the filing of unfair labor practice charges by the Painters and Machinists unions were received by Ehlers on June 4th and June 7th, respectively. Again I did not consider that such charges made any such claim (though possibly that of the Painters Union could be so interpreted). But I soon discarded (with my client's concurrence) any idea of filing a representation petition because of my familiarity with the practice of the local Regional Office of the National Labor Relations Board in refusing to process an employer

representation petition while a refusal to bargain charge under Section 8(a)(5) was pending, and because I was convinced that the unions would have objected to the processing of such petition.

/s/ By RICHARD W. LUND
Richard W. Lund

Subscribed and sworn to before me this 24th day of February, 1966.

/s/ By ZOE E. PORTER
Notary Public in and for the County of
Los Angeles, State of California
Zoe E. Porter
My Commission Expires Apr. 30, 1969

Admitted in Evidence 2-25-66.

RESPONDENT EHLERS' EXHIBIT No. 20.
AFFIDAVIT OF GEORGE HARLAN

State of Texas, County of Harris—ss.

I, George Harlan, being first duly sworn, depose and say:

1. I am employed by the Cadillac Motor Car Division of the General Motors Corporation as Parts and Service Representative of the Houston District. I live at 14109 Cardinal Lane, Houston, Texas.

2. In 1957 I was employed by the Cadillac Motor Car Division at its Los Angeles retail branch at 1076 West Seventh Street in Los Angeles. At that time I worked as a body man in the shop at that location.

3. At the time of the National Labor Relations Board election in 1957, I was an official observer for the Machinists Union. As such I assisted in the balloting conducted by an official of the National Labor Relations Board on the eighth floor of the building at 1076 West Seventh Street. I do not remember the name of that official.

4. After the balloting was concluded, I went with the National Labor Relations Board official to the office of Mr. M. S. Lester on the second floor of the building. Mr. Lester was at that time the General Manager of the Los Angeles Branch of the Cadillac Motor Car Division. I believe there was present at the same time in Mr. Lester's office, in addition to the official of the National Labor Relations Board and myself, Mr. Lester and Mr. Paul French, who was a representative of the Machinists Union. I do not recall who, if anyone else, was present.

5. The official of the National Labor Relations Board then proceeded to count the ballots for and against Machinist Union representation. He first counted from one ballot box the vote of the shop employees from the 5151 Wilshire Boulevard shop. I observed the counting. I do not now recall the specific figures, but I am certain that a majority of the ballots cast were "No". The portion of "No" votes was about double the number of "Yes" votes.

6. The official of the National Labor Relations Board then proceeded to count from another ballot box the votes from the employees at the 1076 West Seventh Street shop. I observed the counting. The total number of ballots so counted was more than twice as great as the total number of ballots counted from the Wilshire

shop. Of such ballots from the Seventh Street shop, the count was about two to one in favor of the Machinists Union, that is, for "Yes". I do not now recall the specific figures. The "Yes" and "No" votes from both shops were then totaled, and the result was a majority of "Yes" votes in favor of the Machinists Union.

/s/ By GEORGE HARLAN
George Harlan

Subscribed and sworn to before me this 18th day of February, 1966.

/s/ By MAURINE PARKER
Notary Public in and for the
above County and State

Admitted in Evidence 2-25-66.

United States Court of Appeals
For the District of Columbia Circuit

INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT LODGE 94, AFL-CIO; and AUTOMOTIVE MARINE, PRODUCTION FINISHERS, EQUIPMENT, MAINTENANCE AND PUBLIC SERVICE PAINTERS LOCAL UNION 1798, BROTHERHOOD OF PAINTERS, DECORATORS and PAPER-HANGERS OF AMERICA, AFL-CIO,

Petitioners,

vs

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION TO REVIEW AND SET ASIDE ORDER OF THE NATIONAL LABOR RELATIONS BOARD

TO: The Honorable, the Judges of the United States Court of Appeals for the District of Columbia Circuit:

COMES NOW, INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT LODGE 94, AFL-CIO, hereinafter referred to as "Petitioner MACHINISTS UNION" and AUTOMOTIVE MARINE, PRODUCTION FINISHERS, EQUIPMENT, MAINTENANCE AND PUBLIC SERVICE PAINTERS, LOCAL UNION 1798, BROTHERHOOD OF PAINTERS, DECORATORS and PAPER HANGERS OF AMERICA, AFL-CIO, hereinafter referred to as "Petitioner PAINTERS UNION", and file their petition pursuant to the pro-

visions of the Labor-Management Relations Act of 1947, as amended (Chap. 20, 81 Stat. 136 et seq.; 29 U.S.C.A., Section 141, et seq.; hereinafter referred to as the Act, for review of the Decision and Order of the National Labor Relations Board entered in Washington, D. C. on March 29, 1968 in National Labor Relations Board Case Nos. 31-CA-83-2, 31-CA-83-3, 31-CA-84-2, and 31-CA-85-2, ordering that the Complaint theretofore filed against THOMAS CADILLAC INC. and LOU EHLERS CADILLAC, alleging the commission of certain unfair labor practices be dismissed in its entirety.

In support of this Petition, Petitioners MACHINISTS UNION and PAINTERS UNION respectfully show:

I

Jurisdiction

Petitioners MACHINISTS UNION and PAINTERS UNION are labor organizations within the meaning of the Act, with their principal offices in the County of Los Angeles, State of California.

The Respondent, NATIONAL LABOR RELATIONS BOARD, hereinafter referred to as the Board, is an agency of the United States of America, originally created pursuant to an Act of Congress, dated July 5, 1935, commonly known as the National Labor Relations Act (Chap. 372, 49 Stat. 451; 29 U.S.C., Sec. 153) and continued in existence under the Labor-Management Relations Act of 1947, as amended (Chap. 20, 61 Stat. 139; 29 U.S.C., Sec. 153); that the principal office of said Board is in Washington, D. C. within the jurisdiction of this Honorable Court. That

all of the acts and conduct constituting the alleged unfair labor practices with which THOMAS CADILLAC INC. hereinafter referred to as "THOMAS" and LOU EHLERS CADILLAC, hereinafter referred to as "EHLERS" are charged occurred in the State of California and that accordingly, this Court has jurisdiction to hear this Petition by reason of Sec. 10(f) of the Act (29 U.S.C. 160(f)). *Int. Union Local 283 vs. Scoffield* 382 US 205, 15 L Ed 2d 272.

II

Statement of Proceedings

A. Filing of charges: On or about June 3, 1965, Petitioner MACHINISTS and PAINTERS UNION filed with the Twenty-First Regional Office of the National Labor Relations Board in Los Angeles, California unfair labor practice charges. Said charges numbered 21-CA-6744-2 and 3 (thereafter renumbered 31-CA-83-2 and 3 by the Respondent Board) and 21-CA-6747-2 (thereafter renumbered 31-CA-84-2 by Respondent Board) and 21-CA-6748-2 (thereafter renumbered as 31-CA-85-2 by the Respondent Board) alleged violations of Sections 8(a)(1) and (5) of the Act.

B. On November 30, 1965, the Regional Director of the Third-First Region of the Board issued a consolidated complaint and notice of hearing. The complaint alleged in substance that THOMAS and EHLERS became successors in interest of the automotive dealerships located at 1076 West Seventh Street and 5151 Wilshire Boulevard, respectively, both in Los Angeles, California by reason of the purchase of said dealerships from CADILLAC MOTOR CAR DIVI-

SION, General Motors Corporation. The Complaint further alleged that both THOMAS and EHLERS had violated and were continuing to violate Sec. 8(a) (1) and (5) of the National Labor Relations Act, all to the detriment of Petitioners MACHINISTS and PAINTERS UNION and the members thereof.

C. Both THOMAS and EHLERS respectively answered in substance by denying the commission of any unfair labor practices.

D. On February 23, 24, 25, and 28, 1966, hearings were held before Lowell Goerlich, Trial Examiner, in Los Angeles, California. On May 17, 1966, said Trial Examiner made and entered his intermediate report and recommended decision and filed the same with the National Labor Relations Board. In said report and decision, he found and concluded that THOMAS and EHLERS, respectively, had engaged in unfair labor practices and recommended a cease and desist order and that they be ordered to take certain affirmative action outlined in said Decision.

E. Subsequent to the filing of said report by the Trial Examiner, the National Labor Relations Board made and entered its Order transferring said case to the Board and continuing said case before the Board.

F. Thereafter, THOMAS and EHLERS filed their objections respectively to said intermediate report and recommended order, findings of fact, and conclusions of law and recommendations of the Trial Examiner. The charging parties, Petitioners MACHINISTS and PAINTERS UNION filed a brief in support of the Trial Examiner's Decision; and the General Counsel filed a memorandum in support of the Trial Examiner's Decision, and a statement of position.

1144 *International Assn. of Machinists, etc. vs.*

DATED at Washington, D. C. this day of,
1968.

RICHMAN, GARRETT & ANSELL

Herbert M. Ansell,

1336 Wilshire Boulevard

Los Angeles, California 17

ABE LEVY

Abe Levy, Esq.

1520 Wilshire Boulevard

Suite 801

Los Angeles, California 17

PLATO E. PAPPS

Plato E. Papps, Esq.

1300 Connecticut Avenue

Washington, D. C.

Attorneys for Petitioners

[Affidavit of Service by Mail Attached.]

[Title of Court of Appeals and Cause.]

ANSWER OF THE NATIONAL LABOR RELATIONS BOARD TO PETITION FOR REVIEW OF A DECISION AND ORDER OF THE BOARD

To the Honorable, the Judges of the United States Court of Appeals for the District of Columbia Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Secs. 151, et seq.); files this answer to the petition to review its Decision and Order of March 29, 1968.

1. The Board admits the allegations contained in Section I of the petition for review relating to jurisdiction.

2. With respect to the allegations contained in Section II of the petition to review, the Board prays reference to the certified transcript of the record for a full and exact statement of the pleadings, evidence, findings of fact, conclusions of law, Order of the Board, and all other proceedings had in this matter.

3. The Board denies the allegations of error contained in Section III of the petition to review.

4. Further answering, the Board avers that the proceedings had before it and the Order of the Board, were and are in all respects valid and proper.

5. Pursuant to Section 10(e) and (f) of the Act, as amended, and Rule 38(g) of this Court the Board

will certify and file with this Court a certified list of all the documents, pleadings, transcript of testimony, exhibits and other materials comprising the entire record of the proceeding before the Board known as Case No. 31-CA-83-2 et al.

WHEREFORE, the Board prays that the Court enter a decree denying the Petition to Review.

/s/ MARCEL MALLET-PREVOST
Marcel Mallet-Prevost
Assistant General Counsel
NATIONAL LABOR RELATIONS
BOARD

Dated at Washington, D. C. this 17th day of June, 1968.

[Affidavit of Service by Mail Attached.]

[Title of Court of Appeals and Cause.]

MOTION FOR LEAVE TO INTERVENE

Pursuant to Rule 38(f) of the Rules of this Court, LOU EHLERS CADILLAC moves this honorable Court for leave to intervene in this proceeding for the review of the decision, findings, and order of the National Labor Relations Board, entered at Washington, D. C. on March 29, 1968, and respectfully shows the Court as follows:

1. LOU EHLERS CADILLAC was the responding party before the National Labor Relations Board in consolidated Case Nos. 31-CA-83-3 and 31-CA-85-2, with respect to which petitioners have sought review in this Court in the above-entitled proceeding:

2. The order of the National Labor Relations Board in the above-referenced consolidated cases directed that the complaint, which charged LOU EHLERS CADILLAC with the commission of unfair labor practices, be dismissed in its entirety;

3. Any decision by this Court in the above-entitled proceeding will materially and substantially affect the rights and duties of LOU EHLERS CADILLAC with respect to Petitioners.

WHEREFORE, LOU EHLERS CADILLAC respectfully moves this honorable Court as follows:

1. That it be permitted to intervene as a party in this review of the decision, findings, and order of National Labor Relations Board, dated March 29, 1968, and

1148 *International Assn. of Machinists, etc. vs.*

that it further be allowed the privilege of filing
briefs and arguing orally before this Court; and,

2. For such other and further relief as this Court
may deem just.

Dated: May 28, 1968.

/s/ JOSEPH A. WHEELLOCK JR.

Joseph A. Wheelock Jr.

615 South Flower Street

Los Angeles, California 90017

Attorney for Lou Ehlers Cadillac

Richard W. Lund

615 South Flower Street

Los Angeles, California 90017

Of Counsel

[Affidavit of Service by Mail Attached.]

[Title of Court of Appeals and Cause.]

MOTION FOR LEAVE TO INTERVENE

Pursuant to Rule 38(f) of the Rules of this Court, THOMAS CADILLAC, INC. moves this honorable Court for leave to intervene in this proceeding for the review of the decision, findings, and order of the National Labor Relations Board, entered at Washington, D. C. on March 29, 1968, and respectfully shows the Court as follows:

1. THOMAS CADILLAC, INC. was the responding party before the National Labor Relations Board in consolidated Case Nos. 31-CA-83-3 and 31-CA-85-2, with respect to which petitioners have sought review in this Court in the above-entitled proceeding;

2. The order of the National Labor Relations Board in the above-referenced consolidated cases directed that the complaint, which charged THOMAS CADILLAC, INC. with the commission of unfair labor practices, be dismissed in its entirety;

3. Any decision by this Court in the above-entitled proceeding will materially and substantially affect the rights and duties of THOMAS CADILLAC, INC. with respect to Petitioners.

WHEREFORE, THOMAS CADILLAC, INC. respectfully moves this honorable Court as follows:

1. That it be permitted to intervene as a party in this review of the decision, findings, and order of National Labor Relations Board, dated March 29, 1968,

1150 *International Assn. of Machinists, etc. vs.*

and that it further be allowed the privilege of filing
briefs and arguing orally before this Court; and,

2. For such other and further relief as this Court
may deem just.

Dated: May 28, 1968.

/s/ H. BURDETTE FREDRICKS
H. BURDETTE FREDRICKS
3600 Wilshire Boulevard
Los Angeles, California 90005
Attorney for Thomas Cadillac, Inc.

[Affidavit of Service by Mail Attached.]

[Title of Court of Appeals and Cause.]

PREHEARING CONFERENCE STIPULATION

Pursuant to Rule 38(k) of the Rules of this Court, the parties, subject to the approval of the Court, do hereby stipulate and agree as follows with respect to the issues, the dates for filing of the briefs and joint appendix, and the contents of the joint appendix.

I.

Statement of the Issue

1. Whether the Board properly reversed the Trial Examiner and dismissed the complaint which alleged that the Intervenor, Thomas Cadillac, Inc., as a successor to Cadillac Motor Car Division, Los Angeles Branch, General Motors Corporation, violated Section 8(a)(5) and (1) of the Act by refusing to bargain with petitioners.

2. Whether the Board properly reversed the Trial Examiner and dismissed the complaint which alleged that the Intervenor, Lou Ehlers Cadillac, as a successor to Cadillac Motor Car Division, Los Angeles Branch, General Motors Corporation, violated Section 8(a)(5) and (1) of the Act by refusing to bargain with petitioners.

II.

The Briefs and Joint Appendix to Briefs

1. The petitioners will file and serve their opening brief on or before August 14, 1968. Respondent, National Labor Relations Board, will file and serve its brief on or before September 13, 1968. Intervenors will file and serve their briefs on or before September 13,

1968. The petitioners will file and serve their reply brief, if any, on or before September 27, 1968.

2. The printed joint appendix will consist of such portions of the record in Case Nos. 31-CA-83-2, 31-CA-83-3, 31-CA-84-2, and 31-CA-85-2, consolidated before the Board as 31-CA-85-2, et al., as the parties hereto shall respectively designate.

3. The petitioners shall designate those portions of the record required to be printed by the Rules of this Court (including the Board's decision and order, the Trial Examiner's decision, this stipulation, and the Court's order thereon).

4. Each party shall designate such additional materials as it wishes to print and shall bear the cost of printing the material which it designates. The preparation of the joint appendix shall be the responsibility of the petitioners and shall be filed with their opening brief.

5. The petitioners shall serve the Board and the intervenors with their designation on or before July 15. The Board shall serve the petitioners and intervenors with its designation of additional portions of the record on or before July 25. The intervenors shall serve the petitioners and Board with their designations on or before August 5.

6. Twenty-two (22) copies of the joint appendix shall be printed under this stipulation; the requisite number being filed with the Court and the remaining copies equally divided among the parties.

Dated at Washington, D.C., this 28th day of June,
1968.

/s/ By MARCEL MALLET-PREVOST
Marcel Mallet-Prevost
Assistant General Counsel

Dated at Washington, D.C., this 1st day of July,
1968.

/s/ My PLATO E. PAPPS
Plato E. Papps
Counsel for Petitioners

Dated at this day of
Counsel for Intervenor
Thomas Cadillac, Inc.

Dated at this day of
Counsel for Intervenor
Lou Ehlers Cadillac

1154 *International Assn. of Machinists, etc. vs.*

United States Court of Appeals
For the District of Columbia Circuit

September Term, 1967

IPD July 16, 1968

No. 21,972

INTERNATIONAL ASSOCIATION OF MA-
CHINISTS, DISTRICT LODGE 94, AFL-CIO,
et al.,

Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

LOU EHLERS CADILLAC; THOMAS CADIL-
LAC, INC.,

Intervenors.

Before: Bazelon, Chief Judge, in Chambers.

PREHEARING ORDER

Counsel for the parties in the above-entitled case having submitted their prehearing stipulation pursuant to Rule 33 of the Federal Rules of Appellate Procedure and Rule 19 of the General Rules of this Court, and the stipulation having been considered, the stipulation is approved, and it is

ORDERED that the stipulation shall control further proceedings in this case unless modified by further order of this Court, and that the stipulation and this order shall be printed in the appendix herein.

[Endorsed]: Filed July 15, 1968. Nathan J. Paulson, Clerk.

[Title of Court of Appeals and Cause.]

STIPULATION AND ORDER EXTENDING
TIME TO LODGE DESIGNATION OF CON-
TENTS OF RECORD AND BRIEFS.

IT IS HEREBY STIPULATED BY AND BE-
TWEEN undersigned counsel that the prehearing con-
ference stipulation heretofore filed in this case be
amended in the following respects only:

1. The petitioners' time for the serving of designa-
tion of contents of record is extended until August 20,
1968.
2. The Board's time for filing and serving of peti-
tioners and intervenors with its designation of addi-
tional portions of the record is extended until August
30, 1968.
3. The time for the filing and serving by intervenors
of their designation of contents upon petitioners and
Board is extended until September 10, 1968.
4. The time for the filing and serving of petition-
ers' opening brief is extended until September 19, 1968.
5. The time for the filing and service of respondent
NATIONAL LABOR RELATIONS BOARD'S
brief is extended until October 23, 1968.
6. The time for the filing and service of intervenors'
briefs is extended until October 23, 1968.
7. The time for the filing and service of petitioners'
reply brief, if any, is extended until October 28, 1968.

1156 *International Assn. of Machinists, etc. vs.*

Dated at Washington, D.C. this 2 day of August,
1968.

/s/ By MARCEL MALLET-PREVOST
Marcel Mallet-Prevost
Assistant General Counsel

Dated at Washington, D.C. this 1 day of August,
1968.

/s/ By PLATO E. PAPPS
Plato E. Papps
Counsel for Petitioners

Dated at Los Angeles, Calif. this 30 day of July,
1968.

/s/ By H. BURDETT FREDRICKS
H. Burdett Fredricks
Counsel for Intervenor
Thomas Cadillac, Inc.

Dated at Los Angeles, Calif. this 30 day of July,
1968.

/s/ By RICHARD W. LUND
Richard W. Lund
Counsel for Intervenor
Lou Ehlers Cadillac

[Title of Court of Appeals and Cause.]

DESIGNATION OF CONTENTS OF RECORD
OF APPEAL

Petitioners designate the following portions of the record, proceedings, and evidence to be designated in the record on appeal in this action, pursuant to Rules 75(a) of the Federal Rules of Civil Procedure and Rule 16 of the General Rule of the U.S. Court of Appeals for the District of Columbia Circuit:

1. Docket entries:

A. June 3, 1965—Charge filed by petitioner Painters Union against Lou Ehlers Cadillac, 31-CA-83-3 (formerly Case No. 21-CA-6744-3).

B. June 3, 1965—Charge filed by petitioner Painters Union against Cecil Thomas & Sons (Cadillac Motor Car Agency) Case No. 31-CA-84-2 (formerly Case No. 21-CA-6747-2).

C. June 4, 1965—Charge filed by Petitioner Machinists Union against Lou Ehlers, Cadillac Motor Car Agency, Case No. 31-CA-85-2, (formerly Case No. 21-CA-6748-2).

C-1 June 4, 1965—charge filed by Petitioner Machinists Union vs. Cecil Thomas & Sons.

D. November 17, 1965—Amended Charge filed by Petitioner Painters Union against Lou Ehlers Cadillac.

E. November 17, 1965—Amended Charge filed by Petitioner Machinists Union against Thomas Cadillac Inc.

F. November 17, 1965—Amended Charge filed by Petitioner Machinists Union against Lou Ehlers Cadillac.

1156 *International Assn. of Machinists, etc. vs.*

Dated at Washington, D.C. this 2 day of August,
1968.

/s/ By MARCEL MALLET-PREVOST
Marcel Mallet-Prevost
Assistant General Counsel

Dated at Washington, D.C. this 1 day of August,
1968.

/s/ By PLATO E. PAPPS
Plato E. Papps
Counsel for Petitioners

Dated at Los Angeles, Calif. this 30 day of July,
1968.

/s/ By H. BURDETT FREDRICKS
H. Burdett Fredricks
Counsel for Intervenor
Thomas Cadillac, Inc.

Dated at Los Angeles, Calif. this 30 day of July,
1968.

/s/ By RICHARD W. LUND
Richard W. Lund
Counsel for Intervenor
Lou Ehlers Cadillac

[Title of Court of Appeals and Cause.]

DESIGNATION OF CONTENTS OF RECORD
OF APPEAL

Petitioners designate the following portions of the record, proceedings, and evidence to be designated in the record on appeal in this action, pursuant to Rules 75(a) of the Federal Rules of Civil Procedure and Rule 16 of the General Rule of the U.S. Court of Appeals for the District of Columbia Circuit:

1. Docket entries:

A. June 3, 1965—Charge filed by petitioner Painters Union against Lou Ehlers Cadillac, 31-CA-83-3 (formerly Case No. 21-CA-6744-3).

B. June 3, 1965—Charge filed by petitioner Painters Union against Cecil Thomas & Sons (Cadillac Motor Car Agency) Case No. 31-CA-84-2 (formerly Case No. 21-CA-6747-2).

C. June 4, 1965—Charge filed by Petitioner Machinists Union against Lou Ehlers, Cadillac Motor Car Agency, Case No. 31-CA-85-2, (formerly Case No. 21-CA-6748-2).

C-1 June 4, 1965—charge filed by Petitioner Machinists Union vs. Cecil Thomas & Sons.

D. November 17, 1965—Amended Charge filed by Petitioner Painters Union against Lou Ehlers Cadillac.

E. November 17, 1965—Amended Charge filed by Petitioner Machinists Union against Thomas Cadillac Inc.

F. November 17, 1965—Amended Charge filed by Petitioner Machinists Union against Lou Ehlers Cadillac.

1158 *International Assn. of Machinists, etc. vs.*

F-1—Nov. 17, 1965—Amended charge filed by Petitioner Painters Union vs. Thomas Cadillac.

G. November 30, 1965—Order Consolidating cases, Consolidated Complaint and Notice of Hearing.

H. December 9, 1965, Answer of respondent, Thomas Cadillac Inc.

H-1. Feb. 24, 1966—Amended Answer of Respondent Thomas Cadillac.

I. December 9, 1965—Motion for Severance by respondent, Thomas Cadillac Inc.

J. December 10, 1965—Answer of Respondent Lou Ehlers Cadillac.

J-1. Feb. 23, 1966—Amended Answer of Respondent Lou Ehlers.

K. December 10, 1965—Motion of Respondent, Lou Ehlers Cadillac for Severance.

L. December 10, 1965—Memorandum in Opposition to respondent Thomas Cadillac Inc. and Respondent Lou Ehlers Cadillac's Motion for Seveance.

M. December 20, 1965—Order Referring Motions of respondents Thomas Cadillac Inc. and Lou Ehlers Cadillac for severance to the Associate Chief Trial Examiner for Ruling.

N. January 18, 1966—Ruling on Motions for severance.

O. May 5, 1966—Party's stipulation correcting transcript of the record.

P. May 17, 1966—Intermediate Report of Trial Examiner, Lowell Goerlick.

Q. March 29, 1968—Decision and Order of the National Labor Relations Board.

2. Petition to review and set aside Order of National Labor Relations Board filed by Petitioner Machinists Union and Painters Union.

3. Answer of the National Labor Relations Board to Petition for Review.

4. Motion of Lou Ehlers Cadillac for leave to intervene.

5. Motion of Thomas Cadillac Inc. for leave to intervene.

6. Prehearing Conference Stipulation

7. Prehearing Order.

8. Stipulation and Order Extending Time to Lodge Designation of Contents of Record and Briefs.

9. Exhibits:

General Counsel (Exhibits No. 3, 4, 5, 6(a), 7(a) through 7(f), 8, 9, 10(a), 11, 12(a) through 12(d), 13, 14(a) through 14(d), 15, 16, 17, 18, 19, 20(a), and 20(b)).

10. The following portions (designated) of the transcript of evidence:

Pages 73-75, 76-79, 82, 88, 129-130, 130-133, 246, 324, 325, 326-327, 303, 302, 300, 406-408, 417-418.

11. Petitioners Answer to Motion of Respondent Ehlers for Judicial notice to be taken of court proceeding.

12. Petitioners Designation of contents of record on appeal.

13. Respondent NLRB Court Designation of Record on Appeal.

1160 *International Assn. of Machinists, etc. vs.*

14. Intervenor Thomas Cadillac Designation of Record on Appeal.

15. Intervenor Ehlers Cadillac Designation. Of Record on Appeal.

Dated: At Washington, D.C. this day of, 1968.

RICHMAN, GARRETT &
ANSELL

HERBERT M. ANSELL

Herbert M. Ansell, Esq.

1336 Wilshire Boulevard

Los Angeles, California 17

ABE LEVY

Abe Levy, Esq.

1520 Wilshire Boulevard

Suite 801

Los Angeles, California 17

PLATO E. PAPPS

/s/ Plato E. Papps, Esq.

1300 Connecticut Avenue

Washington, D. C.

Attorneys for Petitioners

[Affidavit of Service by Mail Attached.]

—

[Title of Court of Appeals and Cause.]

COUNTER-DESIGNATION OF THE RECORD
OF THE NATIONAL LABOR RELATIONS
BOARD TO BE PRINTED IN THE JOINT
APPENDIX

The National Labor Relations Board, respondent herein, in accordance with the Federal Rules of Appellate Procedure and the Rules of this Court, hereby designates the following portions of the record to be printed as part of the joint appendix in the above-matter:

1. The following exhibits or portions thereof in the proceeding consolidated before the Board as Case No. 31-CA-83-2 et al:

- (a) G.C. Exhibit 3(d)
- (b) G.C. Exhibit 19, Exh. (d) thereof (i.e. the last page of the exhibit)
- (c) G.C. Exhibit 6(b), 6(c)
- (d) G.C. Exhibit 19(c) [preamble, Art. I, sec. 1, and Art. X, sec. 5 only], (e), (f), (h), (i), and (s).
- (e) Respondent Thomas Exhibit 1
- (f) Respondent Ehlers Exhibits 4, 9, and 15
- (g) Respondent Ehlers Exhibit 16 par. (1) and (8), and Exhibits A and B thereof, appearing on page 5 and 6 respectively.
- (h) Respondent Ehlers Exhibit 17
- (i) Thomas Cadillac Inc.'s Exceptions to Trial Examiner's Decision
- (j) Lou Ehlers Cadillac's Exception to Trial Examiner's Decision.

2. The following portions of the transcript:

From p. 116, line 18, to p. 121, line 9; p. 127, line 10, to p. 128, line 25; p. 144, line 3, to p. 145, line 5; p. 146, line 16, to p. 148, line 1; p. 149, line 9, to p. 150, line 2; p. 150, line 9, to p. 151, line 16; p. 170, line 1, to p. 172, line 23; p. 182, line 1, to p. 182, line 25; p. 185, line 25, to p. 187, line 10; p. 189, line 1, to p. 191, line 15; p. 195, line 17, to p. 197, line 23; p. 198, line 21, to p. 204, line 25; p. 221, line 15, to p. 223, line 14; p. 263, line 4, to p. 263, line 24; p. 288, line 21, to p. 299, line 25; p. 304, line 1, to p. 304, line 5; p. 304, line 12, to p. 305, line 12; p. 306, line 3, to p. 306, line 9; p. 306, line 18, to p. 308, line 21; p. 311, line 9, to p. 312, line 24; p. 313, line 11, to p. 316, line 24; p. 319, line 10, to p. 320, line 5; p. 332, line 6, to p. 333, line 9; p. 335, line 2, to p. 335, line 9; p. 343, line 15, to p. 346, line 15; p. 359, line 11, to p. 362, line 24; p. 363, line 14, to p. 364, line 16; p. 365, line 19, to p. 367, line 13; p. 369, line 8, to p. 369, line 24; p. 370, line 16, to p. 371, line 6; p. 371, line 20, to p. 372, line 1; p. 373, line 7, to p. 373, line 18; p. 375, line 13, to p. 375, line 16; p. 384, line 17, to p. 384, line 1; p. 387, line 10, to p. 390, line 21; p. 391, line 22, to p. 392, line 23; p. 428, line 7, to p. 429, line 2; p. 430, line 17, to p. 431, line 20; p. 432, line 25, to p. 434, line 25; p. 435, line 24, to p. 436, line 9; p. 437, line 15, to p. 437, line 25; p. 453, line 13, to p. 454, line 1; p. 474, line 1, to p. 474, line 25; p. 476, line 10, to p. 477, line 19; p. 479, line 6, to p. 479, line 18.

Dated at Washington, D. C., this 7th day of August, 1968.

/s/ MARCEL MALLET-PREVOST
Marcel Mallet-Prevost
Assistant General Counsel

[Title of Court of Appeals and Cause.]

ON PETITION TO REVIEW AN ORDER OF
THE NATIONAL LABOR RELATIONS
BOARD

COUNTER-DESIGNATION OF THE RECORD
OF INTERVENOR THOMAS CADILLAC,
INC., TO BE PRINTED IN THE JOINT AP-
PENDIX

Thomas Cadillac, Inc., Intervenor herein, in accordance with the Federal Rules of Appellate Procedure and the Rules of this Court, hereby designates the following portions of the record to be printed as part of the joint appendix in the above matter:

1. The following exhibits or portions thereof in the proceeding consolidated before the Board as Case No. 31-CA-83-2 et al:

- (a) Respondent, Exhibit 1.
- (b) Thomas Cadillac, Inc.'s Exceptions to Trial Examiner's Decision.

2. The following portions of the transcript:

From p. 289, line 5, to p. 317, line 17; p. 332, line 10, to p. 383, line 15; p. 384, line 17, to p. 404, line 18.

Dated at Los Angeles, California this 28th day of August, 1968.

/s/ H. BURDETTE FREDRICKS
H. Burdette Fredricks, Attorney for
Thomas Cadillac, Inc., Intervenor

[Affidavit of Service by Mail Attached.]

[Title of Court of Appeals and Cause.]

INTERVENOR EHLERS' COUNTER-DESIGNATION OF ADDITIONAL PORTIONS OF RECORD TO BE PRINTED IN APPENDIX

Lou Ehlers Cadillac, an Intervenor herein, in accordance with Rule 30(b) of the Federal Rules of Appellate Procedure and the July 15, 1968 Prehearing Order of this Court, as amended by Order of August 15, 1968, hereby designates the following additional portions of the record to be printed as part of the joint appendix in the above matter:

1. The following portions of the Official Report of Proceedings before the Board in Case No. 31-CA-83-2, et al.:

From p. 20, lines 16 to 24; p. 21, lines 21 to 23; p. 23, lines 6 to 11; p. 24, lines 13 to 14; p. 27, line 20, to p. 28, line 13; p. 34, lines 8 to 12; p. 51, lines 8 to 15; p. 72, lines 4 to 12; p. 104, lines 4 to 10; p. 104, lines 18 to 22; p. 134, lines 3 to 12; p. 135, lines 19 to 23; p. 136, lines 5 to 6; p. 136, lines 9 to 15; p. 136, line 21, to p. 137, line 7; p. 140, line 25, to p. 142, line 8; p. 150, lines 6 to 8; p. 153, line 7, to p. 154, line 3; p. 156, line 15, to p. 157, line 9; p. 162, line 22, to p. 163, line 21; p. 164, line 3, to p. 166, line 15; p. 167, line 20, to p. 169, line 25; p. 172, line 24, to p. 174, line 23; p. 175, lines 18 to 20; p. 175, line 23, to p. 176, line 21; p. 177, line 13, to p. 179, line 21; p. 180, line 13, to p. 181, line 14; p. 181, lines 21 to 25; p. 184, lines 12 to 25; p. 191, line 18, to p. 192, line 4; p. 197, line 24, to p. 198, line 20; p. 205, line 1, to p. 206, line 4; p. 206, lines 9 to 19; p. 208, lines 13 to 23; p. 211, line 1, to p.

212, line 17; p. 213, lines 1 to 14; p. 215, line 12, to p. 217, line 2; p. 223, line 24, to p. 224, line 6; p. 224, line 17, to p. 228, line 18; p. 228, line 24, to p. 229, line 5; p. 229, lines 9 to 12; p. 230, lines 1 to 9; p. 236, lines 14 to 25; p. 240, line 4, to p. 242, line 6; p. 243, lines 2 to 12; p. 243, lines 19 to 23; p. 244, lines 4 to 17; p. 255, line 19, to p. 256, line 8; p. 258, line 17, to p. 259, line 3; p. 305, lines 17 to 21; p. 306, lines 10 to 17; p. 308, line 22, to p. 309, line 6; p. 317, lines 7 to 15; p. 320, lines 8 to 24; p. 368, line 19, to p. 369, line 4; p. 432, lines 3 to 18; p. 435, lines 1 to 8; p. 435, lines 18 to 23; p. 436, lines 11 to 22; p. 438, line 1, to p. 439, line 1; p. 440, lines 2 to 18; p. 440, line 25, to p. 444, line 18; p. 446, lines 17 to 19; p. 446, line 25, to p. 448, line 18; p. 449, line 25, to p. 451, line 19; p. 454, line 12, to p. 455, line 11; p. 455, line 16, to p. 456, line 2; p. 460, lines 13 to 23; p. 462, lines 8 to 15; p. 462, line 24, to p. 463, line 20; p. 465, line 23, to p. 466, line 6; p. 471, line 14, to p. 472, line 7; p. 472, line 20, to p. 473, line 25; p. 477, line 20, to p. 479, line 5; p. 479, line 19, to p. 481, line 15; p. 482, lines 4 to 15; p. 508, line 24, to p. 509, line 4; p. 511, lines 16 to 22; p. 514, lines 1 to 12; p. 524, lines 19 to 25; p. 531, lines 9 to 19; p. 542, lines 20 to 25; p. 549, lines 9 to 18; p. 561, lines 15 to 17; p. 563, lines 3 to 4; p. 597, line 9, to p. 598, line 2; p. 605, lines 11 to 15; p. 605, line 25, to p. 606, line 1.

2. The following exhibits, or portions thereof, introduced in such proceeding:

- (a) General Counsel's Exhibit 1-Z-3 (Amendment to Answer of Respondent Ehlers)
- (b) Respondent Ehlers Exhibits 1, 2, 3, and 5

(c) Respondent Ehlers Exhibit 12, excluding Paragraph 4 and the balance of the paragraphs thereafter

(d) Respondent Ehlers Exhibits 16, 18, and 20

3. Ehlers September 2, 1966 Motion for Judicial Notice to be Taken of Court Proceeding (and for Alternative Relief) and Exhibit "C" (Findings of Fact and Conclusions of Law), including the caption (court and parties), attached thereto.

Dated this 28th day of August, 1968 at Los Angeles, California.

/s/ JOSEPH A. WHEELOCK, Jr.

Joseph A. Wheelock, Jr.,

615 South Flower Street

Los Angeles, California

Attorney for Lou Ehlers Cadillac

Richard W. Lund

615 South Flower Street

Los Angeles, California

Of Counsel

[Affidavit of Service by Mail Attached.]

RECEIVED

ORIGINAL

United States Court of Appeals
for the District of Columbia Circuit

SEP 23 1968

PETITIONERS' BRIEF

FILED SEP 23 1968

CLERK OF THE UNITED
STATES COURT OF APPEALS

IN THE

Nathan J. Paulson
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21,972

INTERNATIONAL ASSOCIATION OF MACHINISTS,
DISTRICT LODGE 94, AFL-CIO; and AUTOMOTIVE
MARINE, PRODUCTION FINISHERS, EQUIPMENT,
MAINTENANCE AND PUBLIC SERVICE PAINTERS
LOCAL UNION 1798, BROTHERHOOD OF PAINTERS,
DECORATORS AND PAPERHANGERS OF AMERICA,
AFL-CIO,

Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent,

THOMAS CADILLAC, INC., and LOU EHLERS CAD-
ILLAC,

Intervenors.

ON PETITION TO REVIEW AND SET ASIDE AN ORDER OF
THE NATIONAL LABOR RELATIONS BOARD.

HERBERT M. ANSELL,
1336 Wilshire Boulevard,
Los Angeles, California 90017,

ABE LEVY,
1520 Wilshire Boulevard,
Los Angeles, California 90017,

PLATO E. PAPPS,
1300 Connecticut Avenue,
Washington, D. C.,

Attorneys for Petitioners.

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AFFIDAVIT OF SERVICE BY MAIL
IN THE
UNITED STATES COURT OF APPEALS
FOR THE
DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
for the District of Columbia Circuit

FILED SEP 23 1968

Nathan J. Paulson
CLERK

No. 21,972

INTERNATIONAL ASSOCIATION OF MACHINISTS,
DISTRICT LODGE 94, AFL-CIO; and AUTO-
MOTIVE MARINE, PRODUCTION FINISHERS,
EQUIPMENT, MAINTENANCE AND PUBLIC SER-
VICE PAINTERS LOCAL UNION 1798, BROTHER-
HOOD OF PAINTERS, DECORATORS AND PAPER-
HANGERS OF AMERICA, AFL-CIO,

Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent,

THOMAS CADILLAC, INC., and LOU EHLERS
CADILLAC, Intervenor.

SHIRLEY WINTERS, being first duly sworn, deposes and says: That this affiant is a citizen of the United States of America, a resident of the County of Los Angeles, over the age of eighteen years, not a party to the within and above entitled action; that this affiant is making this service for HERBERT M. ANSELL, who is the attorney for the PETITIONERS in this action; that this affiant is of the firm of Parker & Son, Inc., 241 East Fourth Street, who are the printers and agents in this matter for said attorney, and have their offices in the City of Los Angeles, State of California.

That on the 21st day of September, 1968, affiant served the within PETITIONERS' BRIEF on the RESPONDENT and INTERVENORS in this action by placing a true copy thereof in an envelope addressed to the attorneys of record for said RESPONDENT and INTERVENORS at the business/residence address of said attorneys, as follows:

LATHAM & WATKINS, Richard W. Lund, 615 South Flower Street, Los Angeles, California 90017; MARCEL MALLET-PREVOST, Asst. General Counsel, N. E. R. B., Washington, D.C. 20570; H. BURDETTE FREDRICKS, 3600 Wilshire Boulevard, Suite 1014, Los Angeles, California 90005.

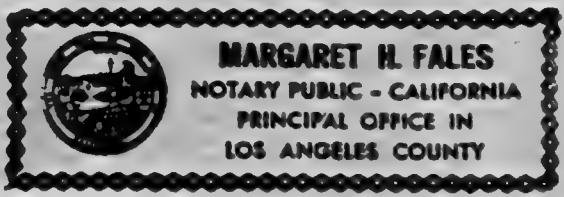
at the county seat of said county, by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California.

That there is delivery service by United States mail at the place so addressed or there is a regular communication by mail between the place of mailing and the place so addressed.

Shirley Winters

Subscribed and sworn to before me this 21st day of September, 1968.

Margaret H. Fales



Margaret H. Fales
Notary Public, in and for the County
of Los Angeles, State of California
My Commission Expires January 11, 1970

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IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21,972

INTERNATIONAL ASSOCIATION OF MACHINISTS,
DISTRICT LODGE 94, AFL-CIO; and AUTOMOTIVE
MARINE, PRODUCTION FINISHERS, EQUIPMENT,
MAINTENANCE AND PUBLIC SERVICE PAINTERS
LOCAL UNION 1798, BROTHERHOOD OF PAINTERS,
DECORATORS AND PAPERHANGERS OF AMERICA,
AFL-CIO,

Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent,

THOMAS CADILLAC, INC., and LOU EHLERS CAD-
ILLAC,

Intervenors.

ON PETITION TO REVIEW AND SET ASIDE AN ORDER OF
THE NATIONAL LABOR RELATIONS BOARD.

PETITIONERS' BRIEF.

STATEMENT OF THE ISSUES.

1. Whether the Board properly reversed the Trial Examiner and dismissed the complaint which alleged that the Intervenor, Thomas Cadillac, Inc., as a successor to Cadillac Motor Car Division, Los Angeles Branch, General Motors Corporation, violated Section 8(a)(5) and (1) of the Act by refusing to bargain with petitioners

The case has not previously
been before the Court.

2. Whether the Board properly reversed the Trial Examiner and dismissed the complaint which alleged that the Intervenor, Lou Ehlers Cadillac, as a successor to Cadillac Motor Car Division, Los Angeles Branch, General Motors Corporation, violated Section 8(a)(5) and (1) of the Act by refusing to bargain with petitioners.

STATEMENT OF FACTS.

I.

Introduction.

This case is before the Court upon the petition of International Association of Machinists, District Lodge 94, AFL-CIO, hereinafter called "Machinists"; and Automotive Marine, Production Finishers, Equipment, Maintenance and Public Service Painters Local Union 1798, Brotherhood of Painters, Decorators and Paperhangers of America, AFL-CIO, hereinafter called "Painters"; to review and set aside an order of the National Labor Relations Board issued on March 29, 1968, pursuant to Section 10(f) of the National Labor Relations Act, as amended 29 U.S.C. 160(f), hereinafter called the "Act".

The real parties in interest, Thomas Cadillac, Inc. and Lou Ehlers Cadillac were permitted to intervene pursuant to Rule 38(f) of the Rules of this Court. The Board's decision and order [Tr. Vol. I, pp. 54-59] are reported at 170 NLRB No. 92.

Petitioners, Machinists and Painters, filed charges against Thomas Cadillac, Inc., (Case Nos. 31-CA-83-2 and 31-CA-84-2) and Lou Ehlers Cadillac (Case Nos. 31-CA-83-3 and 31-CA-85-2) in June, 1965.

A consolidated complaint issued November 30, 1965 and the matter was heard before Trial Examiner Lowell Goerlich on February 23, 24, 25 and 28, 1966. Petitioners alleged that respondent Thomas Cadillac, Inc., hereinafter called "Thomas" and Lou Ehlers Cadillac, hereinafter called "Ehlers", had, by the purchase of the Cadillac outlets at 1076 West Seventh Street and 5151 Wilshire Boulevard, Los Angeles, California, respectively, become successors of General Motors Corporation which had formerly owned and operated said businesses; that by refusing to honor the existing collective bargaining agreement in effect between General Motors Corporation and the unions at said locations and further by refusing to recognize or bargain with petitioners as collective bargaining agent for the service employees working at both locations in machinists and painters classifications, Thomas and Ehlers violated Section 8(a)(1) and (5) of the Act. The Trial Examiner's decision issued May 17, 1966 [Tr. Vol. I, pp. 9-54]. The Trial Examiner concluded that there was sufficient similarity of the employment industry at both Wilshire and West Seventh Street before and after the transfer so as to constitute Thomas and Ehlers successors to General Motors Corporation. He concluded therefore that by refusing to hire the employees of General Motors, or to bargain with petitioners on this question, and by refusing to recognize said petitioners in any regard as bargaining agent, Section 8(a)(1) and (5) had been violated. By way of remedy, the Trial Examiner ordered: (1) that the employees formerly on the payroll of General Motors in the bargaining unit be reinstated and made financially whole; (2) that respondents Thomas and Ehlers recog-

nize and bargain with petitioners; (3) that respondents Thomas and Ehlers honor and give effect to the existing collective bargaining agreement between the unions and General Motors dated December 1, 1964; (4) that respondents Thomas and Ehlers cease changing unilaterally the working conditions of the employees; and, (5) that respondents Thomas and Ehlers cease interfering with, restraining or coercing the employees in the exercise of the rights guaranteed by Section 7 of the Act.*

On March 29, 1968 the respondent National Labor Relations Board, hereinafter called "Board", issued its order finding that the Trial Examiner's rulings were affirmed but essentially reversing his determination that successorship existed. The Board concluded that respondents Thomas and Ehlers did not owe a duty to bargain to either of petitioners and consequently the complaint was dismissed.

II.

Background.

General Motors has operated a Cadillac motor car sales and service business in Los Angeles since 1949. Its locations have been at 5151 Wilshire Boulevard, herein called "Wilshire" and additionally, since January 1954, a location at 1076 West Seventh Street, herein called "Bixel" [Tr. Vol. I, p. 13].

On August 1, 1957, the Petitioner Machinists was certified by the Board as the collective bargaining rep-

*The finding and conclusions of the Trial Examiner are generally held entitled to great weight by a reviewing court. *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 71 S. Ct. 456, 492 "Surely an examiners report is as much a part of the record as the complaint or the testimony."

representative of certain of Cadillac's service employees at Wilshire and Bixel [Tr. Vol. III, pp. 1103, 1104, GC 19 (R) and (S)]. Thereafter, on October 17, 1957, Cadillac and the Machinists entered into a collective bargaining agreement amplifying but not significantly modifying the Board's unit description [Tr. Vol. III, p. 1025, GC 19(c)]. The agreement by its term is continued "in full force and effect without change until October 17, 1958". Painters were included under the agreement.

On November 6, 1958, the Petitioner "Painters" was certified by the Board as the collective bargaining representative of Cadillac's painters at Wilshire and Bixel [Tr. Vol. III, pp. 1107-1109, GC 20A and B]. Thereafter, Cadillac and both Petitioners entered into collective bargaining agreements, amplifying but not significantly modifying the Boards' unit description. The last such agreement was entered into on December 1, 1964 [Tr. Vol. II, p. 527, GC-6-A]. By its terms the agreement continues "in full force and effect *without change* until December 1, 1967" (emphasis added). This latter agreement, to which the Machinists was also a party, contained a lawful Union security clause. In the agreement, General Motors recognized the Machinists for a unit of employees embracing the West Seventh Street and Wilshire Boulevard Branches as follows:

All mechanics, polishers, washers, lubricators, garage attendants, body and fender men, machinists, elevator operators, trimmers, and maintenance but excluding branch manager, assistant branch manager, sales manager, used car manager, service manager, assistant service manager, parts manager, assistant parts manager, general foreman,

foreman, assistant foremen, inspectors, timekeepers, shop clerks, service salesmen, office clerical employees, new and used car salesman, tower operator, pickup drivers-parts, pick-up and delivery men, 4/guards, operating engineers, supervisors, clerical employees, G.M. Tech students, and work dispatchers.

In the same agreement General Motors recognized the Painters for a unit of employees embracing the same locations.

Among other things the Agreement provided for voluntary dues deduction and that an employee who was a member of the Union upon the effective date of the Agreement "shall continue membership in the Union for the duration of the Agreement." Employees who were not members of the Union at the time that the Agreement became effective, were required to become members of the Union "within ten days after the thirtieth day following the effective date of the Agreement or within ten days after the thirtieth day following employment, whichever was later." Compliance with these conditions required the payment of initiation fee and uniform membership dues.

The agreement provided for the referral of certain grievances to an "impartial umpire" from whose decision "there shall be no appeal" and whose decision "will be final and binding on the Union and its members, and the employee or employees involved and the company." The agreement also contained a no-strike clause [pp. 590-596].

A. Demand and Refusal.

On January 12, 1965, General Motors advised the Machinists and Painters Unions by letter that it was in the process of reconsidering its policy of operating its own Cadillac agencies and that it was contemplating the transfer of its West Seventh Street and Wilshire Boulevard branches to independent dealers. On May 10, 1965 General Motors advised the Unions by letter that the Respondents Thomas and Respondent Ehlers would take over the West Seventh Street branch and the Wilshire Boulevard branch respectively on June 1, 1965 [Tr. Vol. III, p. 1081, GC 19(i)]. Thereafter, the Unions by their attorneys, addressed letters to the two respondents. By letter dated May 19, 1965, the Unions requested the respondent Ehlers to meet with their representative, stating *inter alia*:

“The employees at the Wilshire branch and the above unions are concerned that this change will not adversely affect them.

“In order to clarify the rights of the employees and above unions and to deal with any questions that may arise on the part of all parties concerned, we are requesting a meeting at your very earliest convenience.” [Tr. Vol. II, p. 642, GC 7(a)].

By letter dated June 3, 1965, the Union attorney wrote to Respondent Ehlers’ legal counsel and stated *inter alia*:

“You have previously advised that the employer does not consider himself bound by the terms of the existing bargaining agreement between the Machinists and Painters Union and Cadillac Motor

Car Division of General Motors Corp. . . . At this time the Union requests that your client arbitrate the question as to whether the existing contract is binding upon him." [Tr. Vol. II, p. 644, GC 7(b)].

On June 7, 1965, counsel for Respondent Ehlers wrote to the Union's legal counsel and in reply stated:

"Please be advised, in reply to your letter of June 3, 1965, that Lou Ehlers declines your request for arbitration." [Tr. Vol. II, p. 45, GC 7(c)].

On June 8, 1965 the Painters Union through its legal counsel made a similar request for arbitration [Tr. Vol. II, pp. 647-648, GC 7(e)], and on June 14, 1965 Ehlers' counsel similarly declined arbitration [Tr. Vol. II, p. 648, GC 7(f)]. Respondent Ehlers at no time recognized or bargained with the Unions [Tr. Vol. I, p. 18].

On May 17, 1965, the Painters Union, through its counsel communicated with Thomas Cadillac, stating *inter alia*:

"We have been advised by Cadillac that your company will be assuming the operations at the West Seventh Street branch on June 1, 1965.

"The employees at the West Seventh Street branch and the above unions are concerned that this change of ownership will not adversely affect them.

"In view of the history of a high level of dealings and a friendly relationship with your business concern, it is assumed by the above unions that your company will recognize and bargain with the above unions.

“In order to clarify the rights of the employees and above unions, and to deal with any questions that may arise on the part of all parties concerned, we are requesting a meeting at your very earliest convenience. This meeting should include a representative of your company, the Painters Union and myself, the Machinists Union and its attorney Herb Ansell.” [Tr. Vol. II, pp. 720-721, GC 12(A)].

On May 18, 1965, the Painters Union through its legal counsel, communicated with Respondent Thomas and stated that it had learned Thomas was requesting the General Motors employees at West 7th St. to sign applications for employment with him. The letter again suggested the need for a meeting with Union representatives [Tr. Vol. II, p. 722, GC 12(B)].

On June 8, 1965, the Machinists Union again requested that Respondent Thomas arbitrate the question of the contract's applicability and on June 9, 1965, the Painters Union did likewise [Tr. Vol. II, pp. 723-725, GC 12(c) and (d)].

Respondent Thomas failed to respond to any of the requests [Tr. Vol. I, p. 18].

**B. The Employee Staff Prior to and Following
the Transfer of Ownership.**

Shortly prior to May 28, 1965, General Motors both at Wilshire and at Bixel had a staff of new and used car salesmen, service employees, and office and supervisory employees [Tr. Vol. II, pp. 714-719, GC 9, 10, 11]. In addition, General Motors owned certain personalty both tangible and intangible, at both Wilshire and

Bixel, used in connection with its operations [Tr. Vol. II, pp. 519, 541, 727, 751, 792, GC 3(a)-(c) and GC 14(a), (b), (d)]. Finally, General Motors leased the realty which comprised the Wilshire and Bixel locations, together with adjacent or nearby property, used in connection with its operations [GC 3(a), 14 (a) and 14(b)].

As of May 28, 1965 General Motors operated complete facilities for the sale and service of new and used Cadillac motor cars at both Wilshire and Bixel [Tr. Vol. I, pp. 203, 273].

Just prior to May 28, 1965, General Motors, at Wilshire employed 39 service employees represented by the Machinists, and 3 service employees represented by the Painters Union [Tr. Vol. I, p. 153, GC 10; Tr. Vol. II, p. 715]. Of the former, all but one were members of the Machinists and in the Painters category, all were members [Tr. Vol. I, pp. 154-155].

In May, 1965, General Motors at West Seventh Street employed 69 service employees represented by the Machinists and 6 service employees represented by the Painters Union [Tr. Vol. I, p. 155, Vol. II, p. 714, GC 11]. In the Machinists classification, all were members of the Union except 2 while in the Painters class, all were members except one [Tr. Vol. I, pp. 154-155].

C. The Bargaining Units Prior to the Transfer of Ownership.

At Wilshire, prior to May 28, 1965, the employees represented by the Machinists and the Painters Union were supervised by a service manager and three (3) service foremen; at West Seventh Street the employees so represented were supervised by a different service

manager, a general service foreman and seven (7) service foremen [GC Ex. 9, Tr. Vol. II, p. 714, Vol. I, pp. 142-145, GC 9]. Each branch was supervised by a branch manager who reported to the Los Angeles Branch manager. The Los Angeles branch manager was the highest local authority over the two branches and reported directly to the Cadillac division in Detroit, Michigan. The Los Angeles branch manager was located at the West Seventh Street store as were the comptroller, the purchasing agent, the personnel manager, the supervisor of accounting, the used car manager and credit manager. General Motors did not have a service supervisor or manager over both Wilshire and Bixel; each of these service managers reported directly to the branch manager at each respective location [Tr. Vol. I, p. 231]. Although the accounting work was done at the Seventh and Bixel offices, the operations at the two locations were substantially segregated. For example, a separate profit and loss statement and balance sheet was prepared annually at each of the locations [Tr. Vol. I, p. 232, p. 19]. Also, monthly reports showing all phases of the operations of each of the locations were prepared. Such reports would show a sales comparison, profit on sales of cars, expenses, etc. as relates to each of the two locations [Tr. Vol. I, p. 232]. The employees would be directed in practically all phases of their employment by the separate supervisors at both locations. For example, vacations would be confirmed for the most part by the branch supervisors [Tr. Vol. I, p. 233]. The same would be true as to leaves of absence. The Los Angeles general manager for Cadillac was in charge of both locations but also managed the two Cadillac outlets in San Francisco.

While there were apparent interrelationships between the operations of the West Seventh Street and the Wilshire Boulevard branches, J. R. Toombs, supervisor of accounting for General Motors, testified that he recalled but one instance in his 15½ years of employment where there had been an interchange of an employee between the two branches. New employees were hired by the service supervisors of the respective branch for their departments. Interbranch accounts were maintained for transactions between branches. Each branch possessed independent performance capability and were self-contained and self-supporting from the standpoint of equipment, tools and other materials. Each branch had its own complement of employees and supervisors. Separate payrolls were kept at each branch and each branch maintained its own time locks and time cards. The premises occupied by each branch were separately leased [Tr. Vol. I, pp. 19, 232-233].

**D. The Sale to Ehlers and Thomas and the
Commencement of Operations.**

Commencing in March, 1965, both Thomas and Ehlers began negotiating with General Motors relative to procuring a franchise for the West Seventh Street and Wilshire branch respectively and relative to purchasing certain designated assets of General Motors at said locations. During those negotiations, both Ehlers and Thomas were advised that a labor agreement was in existence between General Motors and the Machinists and Painters Unions [Tr. Vol. I, pp. 164, 339].

On May 11, 1965, General Motors and LaRue Thomas executed a buy and sell agreement wherein, among other things, it was agreed that:

(1) General Motors would discontinue all of its Cadillac retail sale and service operations conducted at the West Seventh Street branch and execute with Thomas a "Cadillac Direct Dealer Selling Agreement" with a term of 5 years.

(2) General Motors would lease or sublease the premises occupied by the West Seventh Street branch.

(3) Unamortized leasehold improvements would be assumed by Thomas.

(4) Thomas would purchase:

(a) General Motors' fixed assets including machinery and shop equipment, parts and accessory equipment, furniture and fixtures and service cars.

(b) Company cars used for demonstration purposes and used cars used or acquired by General Motors in connection with its branch operations.

(c) All new and unused Cadillac motor vehicles.

(d) All unused and undamaged Cadillac parts.

(e) All unused and undamaged Cadillac accessories.

(f) All other unused and undamaged Cadillac parts and accessories.

(g) Special tools.

(h) Gas, oil and grease, new tires and tubes.

- (i) Paint materials.
- (j) Undercoating.
- (k) Miscellaneous supplies and materials.

(5) Thomas would purchase all trade accounts receivable.

(6) General Motors would assign to Thomas "all the right, title and interest of [General Motors] in and to Sublet Repairs and Work-in-Process" at General Motors' branch operation.

(7) General Motors would assign all unfilled retail orders for Cadillac motor vehicles.

(8) Thomas agreed "to assume and discharge all liabilities with respect to warranties on new cars and to assume responsibilities for making policy adjustments on new cars delivered by [General Motors'] Branch Operations. . . .

The Direct Dealer Selling Agreement or Franchise Agreement referred to granted Respondent Thomas the "non-exclusive privilege of selling new Cadillac motor vehicles, parts and accessories. . . ." Among other things, the Agreement required Thomas to furnish General Motors every month with an estimate of its requirements for new Cadillac motor vehicles for the next 3 months and "every ten (10) days with a sales report." Under the Agreement Thomas was required to "provide satisfactory sales performance and render satisfactory service to owners" and "receive, investigate and handle all complaints received from owners of Cadillac motor vehicles with a view of securing and maintaining good will of the public toward Dealer, Cadillac and Cadillac motor ve-

hicles” Unremedied complaints were to be reported promptly to General Motors. Thomas was restricted from making any “misleading statements or misrepresentation as to items making up the total selling price of a new Cadillac motor vehicle.” Under the Agreement General Motors was entitled to an examination of Thomas’ accounts and records “to assure the maintenance of an accounting system of a type designated” by General Motors. Respondent Thomas was required to maintain a standard product sign and a standard authorized service sign. The Agreement reserved to General Motors the right to terminate the Agreement if Respondent Thomas did not conduct its business in conformity with the requirements of the Agreement. Upon the termination of the Agreement Respondent Thomas was obligated to sell to General Motors all new and unused motor vehicles, all unused and undamaged Cadillac parts, all unused and undamaged Cadillac accessories and service supplies and certain signs. The Direct Dealers Selling Agreement could not be assigned by Thomas without the consent of General Motors.

General Motors also agreed to discharge its “obligations and liabilities to employees employed by [General Motors] at [its] Branch Operation for vacations, vacation pay, and pay in lieu of vacation accruing through the periods of employment expiring on the closing date.” On June 1, 1965, General Motors assigned to the Respondent Thomas, by separate instrument, Accounts Receivable, Unfilled Retail New Car Orders with Customers Cash Deposits thereon, Sublet Repairs and Work-in-

- (i) Paint materials.
- (j) Undercoating.
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General Motors also agreed to discharge its "obligations and liabilities to employees employed by [General Motors] at [its] Branch Operation for vacations, vacation pay, and pay in lieu of vacation accruing through the periods of employment expiring on the closing date." On June 1, 1965, General Motors assigned to the Respondent Thomas, by separate instrument, Accounts Receivable, Unfilled Retail New Car Orders with Customers Cash Deposits thereon, Sublet Repairs and Work-in-

Process and prepaid taxes. A bill of sale was also executed on June 1, 1965 for the items mentioned in the Agreement of May 11, 1965, and the other provisions of May 11 agreement were complied with [Tr. Vol. I, pp. 20-23, GC Ex. 14(A), (B), (C) and (D)].

On May 12, 1965, Lou Ehlers entered into a buy and sell agreement with General Motors relating to the Wilshire Boulevard branch. The agreement and the details of its implementation were substantially the same as the transactions between General Motors and LaRue Thomas described above. Ehlers consummated the deal as of June 1, 1965, and an assignment to respondent Lou Ehlers Cadillac was executed on June 7, 1965 [Tr. Vol. I, p. 24, GC 3(A)-3(C), pp. 140-141]. In substance both Ehlers and Thomas purchased substantially all of the assets from General Motors that it required to continue the business of selling, leasing and repairing new and used Cadillac automobiles.

Respondent Thomas commenced operation of the sales department on June 1, 1965 and of the service department on June 7, 1965 at the West Seventh Street branch and established its own salaries, wages, hours and working conditions unrelated to those of General Motors.

E. The Hiring of Personnel by Ehlers and Thomas.

All of the service employees employed by General Motors in the contract unit at the Seventh Street branch were interviewed for employment by Thomas' service manager, Lloyd Coats and each upon request submitted application for employment. Out of sixty-three employees hired for the service department,

sixteen were former General Motors employees; one had been in the Painters unit and the others in the Machinists'. Two General Motors employees were disqualified from employment because they had reached the age of sixty-four. According to LaRue Thomas, employees were hired on the basis of their ability.* Out of a service supervisor's staff of seven, on June 7, 1965, three had been service supervisors previously at that location for General Motors. A used car salesman for General Motors became an assistant used car manager for Respondent Thomas and the General Motors supervisor of accounting became Respondent Thomas' business manager. Of the twenty-five new and used car salesmen employed on June 1, 1965 by Thomas, fifteen to seventeen were employed previously in that capacity by Cadillac [Tr. Vol. III, p. 878].

Since June 1, 1965, Respondent Thomas has operated the West Seventh Street branch and has been engaged in substantially the same business operation as formerly engaged in at such branch by General Motors. In the case of Thomas, the only item of major equipment purchased since June 1, at the time of Thomas' deposition, was a vacuum cleaner [Tr. Vol. III, pp. 819-820].

The unions commenced picketing Respondent Thomas on June 7, 1965.

*Lloyd Coates, Service Manager for Respondent Thomas testified in his deposition, as follows: that he did all the hiring for Thomas, that he interviewed approximately 100 employees including all of the former GM employees; that the standards he applied were loyalty, honesty, and a good mechanical background; that none of the former GM employees failed to meet these standards; that with the exception of 3 employees who he disqualified because of age, he couldn't recall any other specific factor that disqualified any of the GM employees for hire [Tr. Vol. III, pp. 819-820].

At the Wilshire branch, all of the service employees working for General Motors made application for jobs and were reviewed for hire by General Motors Wilshire service manager Balsemann and General Motors Wilshire foreman, Irving Graham, who became service manager under Ehlers [Tr. Vol. I, p. 24]. The stated object was to select the most competent and satisfactory persons. Of the thirty-five service employees employed by Ehlers in June, Irving Graham hired eleven former General Motors employees.* Ehlers, as of June 1, 1965 had fourteen persons employed in supervisory capacity throughout the service and maintenance departments. Of this number, nine were employed by General Motors prior to June 1 [Tr. Vol. II, pp. 447-455, GC 3]. Of the five personnel employed in the parts department under Ehlers, all of them were employed previously by General Motors in the same location and the same department [Tr. Vol. II, pp. 458-460, GC 3]. Of the twelve persons employed by Ehlers in the clerical section, eight were previously employed in that section by General Motors at the same location and one additional was employed at the Seventh Street factory branch [Tr. Vol. II, pp. 460-465, GC 3]. Of the twelve new car salesmen and four used car salesmen employed by Ehlers as

*Graham in his deposition testified as follows: that the GM mechanics on the payroll as of May 28, 1965 had all received training at GM School; that he received prior to May 28, 1965 some complaints from customers about the quality of service work performed but after investigation, he determined that a large number of those lacked any merit that it is extremely common to receive some number of complaints in the automotive field; that the percentage of complaints which he determined to have merit after investigation was less than he encountered at the 7th St. location; that the 11 GM employees he invited to work at Ehlers were in general more "versatile" and had "more background experience with Cadillacs" than the others, and were "more competent" [Tr. Vol. II, pp. 410-413, GC 2].

of June 1, 1965, all of them were on the payroll for General Motors at the Wilshire branch prior to the takeover [Tr. Vol. II, p. 466, GC 3]. In total, Ehlers hired a total of eighty-seven employees, including management and supervision, of whom fifty-four had formerly been employed by General Motors at the Wilshire Boulevard Branch. Some General Motors Work-in-Process was completed by Respondent Ehlers [Tr. Vol. I, p. 24].

F. Operation of Ehlers and Thomas.

Since June 1, 1965, Respondent Ehlers has operated the Wilshire Boulevard branch and has been engaged in substantially the same business operations formerly engaged in at such branch by General Motors [Tr. Vol. I, p. 25].

Like Thomas, Ehlers continued to operate with the entire inventory that was on hand as of May 28, 1965. As of the time of his deposition, he added only a truck, sound proof booth, duplicating machine and a few other pieces of equipment, mostly relating to the cleaning and maintenance functions which Ehlers has elected to perform with his own employees rather than using outside services as did General Motors [Tr. Vol. II, pp. 496, 498, GC 3].

Thus, in both cases, there was a 100% continuity of operation with virtually the same inventory of major and minor equipment as existed under the predecessor. The unions commenced picketing Respondent Ehlers on June 9, 1965 [Tr. Vol. I, p. 25].

As to change of policy and practices amongst the employees after the sale, it is a fact that prior to June 1, 1965 some categories of service and maintenance em-

ployees were paid hourly and others, notably mechanics, were paid a specific wage per hour multiplied by the amount of time allowed on each job. General Motors publishes a book specifying the time allowance on each particular job. Since the Ehlers takeover, the time allowance set by General Motors is still followed, but the hourly rate is established by Ehlers (Ehlers' deposition) [Tr. Vol. II, pp. 467-468, GC 3]. Aside from this, the changes in policy claimed to exist since the Ehlers takeover are as follows:

1. Under Ehlers, department heads or foremen are required to meet regularly with subordinates to clarify policies and procedures [Tr. Vol. II, pp. 469-471, GC 3].

2. Stress is placed upon the duty of mechanics to keep the shop clean within the confines of their own work area [Tr. Vol. II, pp. 471-472, GC 3].

3. The customer pick-up and delivery service that existed under General Motors has been eliminated [Tr. Vol. II, p. 472, GC 3].

4. The outside maintenance service has been eliminated [Tr. Vol. II, p. 473, GC 3].

5. A vehicle upon being returned is assigned to the mechanic who worked on it previously [Tr. Vol. II, p. 474, GC 3].

6. The General Motors policy of permitting employees to register complaints upon a special list has been eliminated. Under Ehlers, employees are to take up com-

plaints with their manager and these complaints are to be periodically reviewed and the employees not placated so much as Ehlers believed occurred under General Motors [Tr. Vol. II, pp. 475-479, GC 3].

7. More stress is laid on the requirement that an employee be capable of performing more than one operation and that specialization be avoided to the extent possible. Ehlers conceded this does not apply to all cases since some functions require specialization [Tr. Vol. II, pp. 479-481, GC 3].

Irving Graham, shop foreman, stated that he was employed by General Motors prior to May 28, 1965, and that the mechanics at that time generally did not specialize in just one function but would do other things also. He did state that this was considered an asset to the company but was not stressed to the same extent as under Ehlers.

8. More concern was to be paid to customer satisfaction and employees were to complete a job before leaving work if such could be done in a short time [Tr. Vol. II, pp. 482-483, GC 3].

9. More stress is laid to road testing of automobiles and every mechanic is required to test his own work if indicated [Tr. Vol. II, pp. 483-485, GC 3].

10. Ehlers concedes that the dispatching of work to shop employees is performed the same since June 1 as prior thereto [Tr. Vol. II, pp. 485-486, GC 3].

11. Although the daily hours at 8:00 A.M. to 4:30 P.M. remain the same since Ehlers take-over, the shop

is now open as early as 6:30 to 7:00 A.M. for employees who wish to start earlier. Also Ehlers has commenced a night service Monday through Friday from 4:30 P.M. to 1:00 A.M. Under Cadillac, there was not any night shift [Tr. Vol. II, pp. 486-487, GC 3].

12. The sales department maintains evening hours both under General Motors and Ehlers [Tr. Vol. II, p. 487, GC 3].

13. If an automobile is returned, it is assigned to the mechanic who worked on it initially and if he is found to be chargeable with the defect, he is expected to perform the additional repair work without pay. Under Cadillac, if a complaint arose on a new automobile, it would be assigned to some mechanic by the service manager, and such mechanic might or might not be the same person who performed the work initially [Tr. Vol. II, pp. 489-490, GC 3].

14. Ehlers concedes that the same employees that worked on incentive prior to the June 1 date, still work on incentive [Tr. Vol. II, pp. 487-489, GC 3].

In the case of Respondent Thomas, it is not even claimed that *any* deviation in operating policy has been put into effect since the take-over from General Motors [Tr. III, p. 881, GC 18; Tr. Vol. III, pp. 812-813].

ARGUMENT.

I.

Respondents Thomas and Ehlers Refusal After Request to Bargain With the Representatives of the Employees in the Absence of a Good Faith Doubt of Majority Status Clearly Was Violative of Their Statutory Obligations. Enforcement of the Duty to Bargain Upon Respondents Is in Accord With Well Established Decisions of the Courts and Board.

The following facts, of an undisputed character, are, we submit, highly significant:

1. Petitioner Unions as of May 28, 1965 were the certified representatives of the employees as to both locations and had maintained this status since 1957 (Machinists) and 1958 (Painters). These certifications were at all times in full force and effect.

2. Petitioner Unions were as of May 28, 1965 signatory to a labor agreement with General Motors which contract was to remain in effect until December 1, 1967.

3. Both Unions tendered unequivocal requests for recognition to respondents Thomas and Ehlers shortly after their identities were known. In this connection, Petitioner Unions requested meetings for the purpose of discussing the effect of the transfer of operations upon the members of the bargaining units. Respondents refused to meet and further declined to submit to arbitration the question of the applicability of the existing contract upon their operations. In this regard Respondent Ehlers did not question the Unions' majority status but simply denied the contract was binding

upon him. Respondent Thomas did not even see fit to answer the communications sent by the Unions.

4. Neither of Respondents ever petitioned the NLRB for the conduct of an election in order to resolve the question of representation, such procedure being available to them under Section 9 of the Act. Neither did Respondents in any other fashion indicate a doubt as to the unions majority status.

On or about May 11 and 12, 1965, Respondents Thomas and Ehlers executed all of the principal documents with General Motors providing for the transfer of operations. At the time of this transaction, both respondents were aware of the existence of the labor agreement between General Motors and Petitioner Unions.

6. As of May 28, 1968, over 95% of the employees in the bargaining units were dues paying members of Petitioner Unions and had in effect voluntary authorizations for the check-off of dues from their wages.

7. Respondents Ehlers and Thomas shortly prior to May 28, 1965 commenced unilaterally and without consulting with Petitioner Unions to hire employees. A minority of the employees of General Motors in the bargaining unit were hired. *In this regard the testimony of Respondents Thomas and Ehlers, and their agents disclosed that there did not exist any good and sufficient reason for failure to hire virtually all of the employees.*

8. Both Respondents proceeded to establish unilaterally the wages and other conditions of employment and to otherwise deal with their employee staff in total derogation of the bargaining agent and the labor agreement.

9. The employing industry at both locations prior to and following the sale by General Motors remained the sale of Cadillac Motor Vehicles, parts and accessories and the service of such vehicles.

A. The Existence of Valid Certifications Created a Presumption of Continued Majority Status.

Well established decisions clearly define the duty imposed upon an employer in this circumstance.

In *Joy Silk Mills v. N.L.R.B.* (C.A. D.C.), 185 F. 2d 732, 741, 87 App. D.C. 360 (Nov. 2, 1950) the court stated:

“It has been held that an employer may refuse recognition to a Union when motivated by a good faith doubt as to that Union’s majority status (citing cases). When, however, such refusal is due to a desire to gain time and to take action to dissipate the union’s majority the refusal is no longer justifiable and constitutes a violation of the duty to bargain set forth in Section 8(a)(5) (citing cases). *The Act provides for election proceedings in order to provide a mechanism whereby an employer acting in good faith may secure a determination whether or not the union does in fact have a majority and is therefore the appropriate agent with which to bargain.*” (emphasis added).

In *Brooks v. N.L.R.B.*, 348 U.S. 96, 100, 99 L. Ed. 133, the Court outlined in detail the statutory scheme set forth in the Labor Management Relations Act, 61 Stat. 136, 29 U.S.C. Section 159 (c)(1)(B) of the Act. The court pointed out that in 1947:

“The National Labor Relations Act was amended to provide that (a) employees could petition the

Board for a decertification election, at which they would have an opportunity to choose no longer to be represented by a union. . . . (b) an employer, if in doubt as to the majority claimed by a union without formal election or beset by the conflicting claims of rival unions, could likewise petition the Board for an election. . . .”

The court in the *Brooks* case, pointing up the high level of duty owed by the employer in this area, stated:

“Petitioner contends that whenever an employer is presented with evidence that his employees have deserted their certified union, he may forthwith refuse to bargain. In effect he seeks to vindicate the rights of his employees’ selected bargaining representative. If the employees are dissatisfied with their chosen union, then they can submit their own grievance to the Board. *If an employer has doubts about his duty to continue bargaining, it is his responsibility to petition the Board for relief while continuing to bargain in good faith at least until the Board has given some indication that his claim has merit. . . .* The underlying purpose of this statute is industrial peace. To allow employers to rely on employees’ rights in refusing to bargain with the formally designated union is not conducive to that end, it is inimicable to it. *Congress has devised a formal mode for selection and rejection of bargaining agents and has fixed the spacing of elections, with a view of furthering industrial stability and with due regard to administrative prudence.*” (emphasis added).

Where a union following a Board conducted election acquires a certification, as did Petitioners in this case, additional well defined principles govern the conduct of the parties. In *N.L.R.B. v. Gulfmont Hotel Co.*, 362 F. 2d 588, 589, 62 LRRM 2453 (C.A. 5) the court said:

“It is well settled that in the absence of special circumstances a union’s majority status is irrebuttably presumed for a period of one year following the union’s certification by the Board as collective bargaining agent. We think it is also true that upon the expiration of the certification year, the presumption of majority status continues but becomes rebuttable . . . we think it can be fairly stated that any doubt as to the continuing majority status must rest on a reasonable basis and may not depend solely upon unfounded speculation or a subjective state of mind (citing cases).”

Amplifying this rule, the court in *N.L.R.B. v. Warrensburg*, 340 F. 2d 920, 923, 58 LRRM 2145, (C.A. 2) stated:

“Under the Act an existing certification must be honored until lawfully rescinded, possibly subject to the exception . . . that an employer will not be required to bargain with a union which has demonstrably lost its majority status, and where the filing of a petition for decertification would be futile (citing cases). That exception would not apply to a situation such as here where it was possible for the union to be removed as the bargaining agent of the employees. Those employees who were dissatisfied with the union arrangement could have submitted their grievances to the Board, and

following the twelve month certification period, any remaining dissatisfied employees, under Section 9(e)(1) and (2) of the Act, could have filed a petition for a new election. *Alternatively, the respondents might have petitioned the Board for relief.*" (emphasis added).

Stressing that the responsibility to utilize the election machinery under the Act cannot be shifted to the union, the Board in *Bernel Foam Products Co.*, 146 N.L.R.B. 1277, 1280 stated:

"Since this difficult and rather dubious choice is created by the employer's unlawful conduct, there is no warrant for imposing upon the union which represents the employees an irrevocable option as to the method it will pursue in seeking vindication of the employees' representation right while permitting the offending party to enjoy at the expense of public policy the fruits of such unlawful conduct."

See also: *Kentucky News, Inc.*, 165 NLRB No. 119, 65 LRRM 1600 (holding that fact of high turnover in employees does not provide reasonable basis for belief in loss of majority even when such fact is coupled with statements by employees that they no longer wish union representation); *Little Rock Downtowner, Inc.*, 168 NLRB 18, 66 LRRM 1267; *Celanese of America*, 95 NLRB No. 83, 28 LRRM 1363; *N.L.R.B. v. Minute Maid Corp.*, 283 F. 2d 705, 47 LRRM 2072 (C.A. 5); *Colson Corp. v. N.L.R.B.*, 347 F. 2d 128, 59 LRRM 2153 (C.A. 8).

B. The Existence of a Collective Bargaining Agreement Likewise Created a Presumption of Continued Majority Status.

In addition to the certifications issued to the Machinists and Painters Unions, neither of which were ever challenged in the years since 1957, the existence of the labor agreement executed in 1964 gives rise to a presumption of majority support.

In *Mashara Construction Co.*, 171 NLRB No. 80, 68 LRRM 1120 (May 24, 1968), a union with majority support executed a contract; there then occurred a strike followed by a decertification petition. The Board upholding the defense of contract bar, stated:

“In representation proceedings, it is the practice of the Board . . . at least so far as the question of a bar to a proceeding is concerned, to presume the legality of a collective agreement and to refuse to admit evidence on the question whether at the time the contract was executed a majority of the employees covered by such a contract had designated this contracting union as their bargaining representative. . . .”

Respondents Thomas and Ehlers at no time have questioned the fact that on May 11 and 12 when they executed the contracts providing for transfer of ownership from General Motors, that the Unions were the majority chosen representatives of the employees. *Indeed such contention would be untenable in view of the admitted fact of the contract, the certification and the*

fact that virtually all of the employees were dues paying members in good standing in the union. If Respondents had petitioned for an election, assuming they entertained a good faith doubt as to the fact of majority status, the replacement employees hired by Respondents and also the General Motors employees, members of the bargaining unit, on strike would have been entitled to vote. *National Labor Relations Act, Title 29 U.S.C. Section 159(3).* For this obvious reason, Respondents have chosen to base their refusal to bargain entirely on the defense that such obligation does not devolve upon them as purchasers; that somehow by the purchase of the Wilshire and 7th Street locations, even with knowledge that a labor agreement was in effect, Respondents were free to discharge without cause the great bulk of the loyal and long time faithful employees who had worked at those locations for many years, without even courtesy consultation with the unions and to arbitrarily select replacements and establish unilateral wage and other employment policy. By such contention, Respondents attempt to avoid the thrust of the clearly established duty to bargain outlined above. We demonstrate herein that Respondents' defense of lack of successorship is devoid of merit.

II.

The Employment Industry Remained Substantially Intact After the Transfer of Ownership. Consequently, the Existing Contract and Duty to Bargain Under Well Defined Case Law Were Assumed by Respondents Thomas and Ehlers.

The principle that obligations of an employer in the field of labor relations generally are incumbent upon his purchaser is nothing novel. Certifications for example, have long been held to be binding upon the successor. In *N.L.R.B. v. Armato*, 199 F. 2d 800, 803, 31 LRRM 2091 (C.A. 7), the court stated:

“The very nature of a certification of a union as bargaining agent for a group of employees impels the conclusion that a mere change of employers does not operate to destroy the effectiveness of a certification. It is an official pronouncement by the Board that a majority of the employees in a given work unit desire that a particular organization represent them in their dealings with their employer. *There is no reason to believe that the employees will change their attitude merely because the identity of their employer has changed. . .*” (Emphasis added).

The court in upholding the certification upon the successor then states at page 803:

“The nature of the industry has not changed. Krantz’ customers were retained; his work in process was completed and operations of a similar nature had been begun. *While the work force was considerably reduced, that factor standing alone did not justify the refusal to bargain. . .*” (Emphasis added).

The court concluded at page 803:

“Nor is this conclusion impinged upon by the fact that respondent’s employee force increased to twenty-five, seventeen of whom were newcomers, *for this change in personnel took place after the unfair labor practice occurred.* (citing *Franks Brothers Co. vs. N.L.R.B.*, 321 U.S. 702).” (Emphasis added).

In *Martin White, Jr.*, 166 NLRB No. 81, 65 LRRM 1491 the Board upheld a certification despite the fact that the sole shareholder of the predecessor died and that a prospect of liquidation by the executor of the corporate assets was present. The Board held that while the corporee existence was being maintained, the certification imposed upon the company the duty to bargain.

Likewise in *Quaker Tool & Dye, Inc.*, 162 NLRB No. 124, 64 LRRM 1202 (Jan. 30, 1967), the Board upheld a certification as against the successor, stating:

“Under the circumstances of this case, we find that *the union’s certification created a presumption of continuing majority which has not been rebutted by the mere passage of time.* Therefore, and in view of the continuity in the employing enterprise, the respondent was obligated to bargain with the union, etc.” (Emphasis added).

Similarly, Board orders requiring bargaining have been held to be binding upon successor employers in a great number of decisions. In *Perma Vinyl Corp.*, 164 NLRB No. 119, 65 LRRM 1168 (May 24, 1967), the Board stated:

“To further the public interest involved in effectuating the policies of the Act and achieve the

objectives of National Labor policy reflected in established principles of federal law, we are persuaded that one who acquires and operates a business of an employer found guilty of unfair labor practices in basically unchanged form under circumstances which charge him with notice of unfair labor practice charges against his predecessor should be held responsible for remedying his predecessor's unlawful conduct."

The Board then states the underlying policy of imposing upon the successor the obligation to correct a wrong for which he was not responsible, as follows:

"In imposing this responsibility upon a bona fide purchaser, we are not unmindful of the fact that he was not a party to the unfair labor practices and continues to operate the business without any connection with his predecessor. However, in balancing the equities involved, there are other significant factors which must be taken into account. *Thus, it is the employing industry that is sought to be regulated and brought within the corrective and remedial provisions of the Act in the interest of industrial peace.* When a new employer is substituted in the employing industry, there has been no real change in the employing industry insofar as the victims of past unfair labor practices are concerned, or the need for remedying those unfair labor practices. Appropriate steps must still be taken if the effects of the unfair labor practices are to be erased and all employees reassured of their statutory rights. And it is the successor who has taken over the control of the business who is generally in the best position to remedy such

unfair labor practices most effectively. The imposition of this responsibility upon even the bona fide purchaser does not work an unfair hardship upon him. *When he substituted himself in place of the perpetrator of the unfair labor practices, he became the beneficiary of the unremedied unfair labor practices. Also, his potential liability for remedying the unfair labor practices is a matter which can be reflected in the price he pays for the business, or he may secure an indemnity clause in the sales contract which will indemnify him for liability arising from the seller's unfair labor practices.*" (emphasis added).

Certifications in this regard are universally treated by the Board as flexible and able to withstand changes in form of a business enterprise or union. In *National Carbon Co.*, 116 NLRB 68, 38, LRRM 1284, a certified union merged with another union into a single organization. The Board held that the consolidated union resulting from the merger succeeded to the certified union's status and that bargaining rights attached. In *Pacific Coast Shipbuilders Association*, 157 NLRB 384, 386, 61 LRRM 1362, as illustrative of the flexibility of a certification, the Board treated a petition for election as a motion to clarify a certification. The Board stated:

"It should also be noted that there is no limitation upon the right of a party to request clarification of an existing certification and in fact the Board has in the past resolved the issues before it by treating a representation petition as a request

for clarification.” A similar result was reached in *Libby, McNeill & Libby*, 159 NLRB No. 677, 62 LRRM 1276, where the union’s certification was amended to include a different operation.

Thus, in furtherance of the purposes of the act, the principle that bargaining orders, certifications and contractual obligations devolve upon one who purchases and operates a business enterprise in substantially unchanged form is well established.

The Labor Management Relations Act in Title 29, Section 141 states its purpose and policy is: “. . . to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other. . . .” In this context, the balance of the Act encourages collective bargaining, defines unfair labor practices, and prescribes the means by which employees may voice their determination as to collective bargaining by means of elections, etc., and prescribes additional rules to assist parties in arriving at a mature stable collective bargaining relationship. In *N.L.R.B. v. Lyon Oil Co.*, 352 U.S. 282, 289, the court stated that a purpose of the Act was “to substitute collective bargaining for economic warfare . . .”

Where an employer under contract transfers his operations, the burden imposed upon the employees we described in *Wiley v. Livingston*, 376 U. S. 543, 549; 11 L. Ed. 2d 898 as follows:

“Employees, and the union which represents them ordinarily do not take part in negotiations leading to a change in corporate ownership. The negotiations will ordinarily not concern the well being of the employees, whose advantage or disadvantage, potentially great, will inevitably be incidental to the main considerations. *The objectives of national labor policy, reflected in established principles of federal law, require that the rightful prerogative of owners independently to rearrange their businesses and even eliminate themselves as employers be balanced by some protection to the employees from a sudden change in the employment relationship.* The transition from one corporate organization to another will in most cases be eased and industrial strife avoided if employees’ claims continue to be resolved by arbitration rather than by ‘the relative strength . . . of the contending forces’.” (Emphasis added.)

Wiley involved a merger between two companies. However, this holding was expanded in *Wackenhut Corp. v. International Union, United Plant Guard Workers of America*, 332 F. 2d 954 (C.A. 9) the court there stated at page 958:

“ . . . where there is substantial similarity of operation and the continuity of identity of the business enterprise before and after a change in ownership, a collective bargaining agreement containing an arbitration provision, entered into by the predecessor employer is binding upon the successor employer.”

The extent to which the contract of the predecessor would be binding upon the successor was explained in

United Steelworkers of America v. Reliance Universal, Inc., 335 F. 2d 891, 895 (C.A. 3). In that case the court observed:

“Although the pre-existing labor contract indicates the structure of labor relations and the established practice of the shop at the beginning of the new proprietorship, an arbitrator of a subsequent complaint charging unwarranted departure from that scheme may properly consider any relevant new circumstances arising out of the change of ownership, as well as the provisions of and practices under the old contract in achieving a just and equitable settlement of the grievance at hand.”

In the *Wackenhut* case (*supra*), the court characterized *Wiley* as follows:

“What the Supreme Court did in Wiley was to balance the rightful prerogative of owners independently to rearrange their businesses and even eliminate themselves as employers against the necessity of affording some protection to the employees covered by a collective bargaining agreement containing an arbitration clause, from a sudden change in the employment relationship. Having in view the objectives of national labor policy reflected in established principles of federal law, the court held the described interest of the employees outweighs that of the employer.” (Emphasis added)

In *N.L.R.B. v. Tempest Shirt Manufacturer*, 285 F. 2d 1, 4 the court stated:

“. . . the crucial question for determining successorship is one of continuity: whether the industry remains essentially the same after the transfer of ownership.”

In *N.L.R.B. v. Colten*, 105 F. 2d 179, 183, the court stated:

“It is the *employing industry* that is sought to be regulated and brought within the corrective and remedial provisions of the Act in the interest of industrial peace . . . it needs no demonstration that the strife which is sought to be averted is no less an object of legislative solicitude when contract, death or operation of law brings about change of ownership in the employing agency.” (Emphasis added).

In *Overnite Transport v. N.L.R.B.*, 372 F. 2d 765, 768, 64 LRRM 2361 (C.A. 4), the court reviewed a Board order to bargain directed against the successor, even though the contract had expired before the sale was made. The court stated:

“It can now be considered settled that if the transfer of assets and employees from one employer to another leaves intact the identity of the employing enterprise, then the former’s duty to recognize and bargain with an incumbent union devolves upon the latter as successor employer (citing cases).”

In *N.L.R.B. v. McFarland*, 306 F. 2d 219, 220, 50 LRRM 2707 (C.A. 10), the court further refined the issue of successorship as follows:

“. . . our question is whether the succession of the respondent has changed the *employing industry* so as to render the certified bargaining union inappropriate. . . . In deciding this question, we nec-

essarily deal in terms of *succession of employment, and not succession or employers, i.e.* in terms of the continued nature of the employment rather than the source of such employment. *If the transfer operated to effect a basic change in the employing industry . . . then the bargaining unit is no longer appropriate . . .*" (emphasis added).

In *N.L.R.B. v. Lunder Shoe Corp.*, 211 F. 2d 284, 286, 33 LRRM 2695 (C.A. 1), the court stated:

"In order to secure some measure of stability in bargaining relationships, the certification of a bargaining representative obliges the employer to recognize and bargain with such representative for a reasonable period (citing cases). What constitutes a reasonable period will depend upon the facts of each individual case, but it is well established that a mere change of employers alone is not sufficient to nullify the certification of the employees' representative (citing cases). In the absence of a substantial change in the nature of the employer-employee relationship there is no reason to believe that the employees will change their attitude merely because the identity of their employer has changed (citing cases). If the 'employing industry' remains essentially the same after the transfer of ownership, Lunder is bound by the union's certification, because it is the employing industry that is sought to be regulated and brought within the corrective and remedial provisions of the Act in the interest of industrial peace . . ."

See also *N.L.R.B. v. Blair Quarries*, 152 F. 2d 25.

A similar situation existed in *Randolph Rubber Co.*, 152 NLRB No. 496, 499. In that case the Board stated:

“... while Respondent introduced improved machines and techniques, made changes in the managerial staff, used its own trademark and acquired new customers, these factors did not appreciably alter the basic similarity of Respondent's operation to that of the Rubber Corporation.”

The Board in its decision placed heavy emphasis upon the gigantic size of General Motors as compared to Respondents Ehlers and Thomas and somehow found in this fact a sufficiently basic dissimilarity so as to avoid the thrust of successorship. We submit that the trial examiner again adequately deals with this contention as follows:

“Nor is the trial examiner persuaded that the Respondent employers are absolved from the obligations which attach to a successorship, where there is a substantial continuity in the identity of the employing enterprise because the Respondent employers' predecessor was General Motors . . . rather than a smaller employer such as the respondents, or because separate successors purchased semi-autonomous enterprises, for, under the circumstances present here *'the interests of industrial peace' is as pronounced as in those kinds of successorships which have warranted the Board's concern and the imposition of the obligation to bargain.*” (Emphasis added). [Tr. Vol. I, p. 28].

Again, the Respondent Board adopted the contention of Ehlers and Thomas that the duty to bargain did not

survive the transfer from General Motors because of the happenstance that both Respondents did not hire a majority of the former employees. This contention was rejected in *K.B. & J. Youngs Supermarkets v. N.L.R.B.*, 377 F. 2d 463, 466, 65 LRRM 2369 (C.A. 9). In that case such as here, the employees of the predecessor were terminated by him and the successor commenced his own hiring procedure. The court stressed that with reinstatement of the employees ordered, continuity in the identity of the work force would be presumed to follow and an order to bargain with the union would be appropriate. The court held that whether the employees were terminated by the predecessor or the successor was immaterial. Then addressing itself squarely to the question as to whether the absence of a majority carry-over of the employees' staff would defeat the obligation to bargain, the court stated:

"Petitioner protests that in determining the existence of substantial continuity of identity in the employing enterprise in the Wiley sense, continuity of employment is itself a relevant if not essential factor. We cannot agree under the facts of this case. *Petitioner's argument amounts to a bootstrap contention that a discriminatory interruption of employment cannot be challenged since it did in fact occur.*" (Emphasis added).

In *Chemrock Corp.*, 151 NLRB No. 1074, 1078, 58 LRRM 1582, a decision incidentally relied on heavily by the trial examiner but totally ignored by Respondent Board, the Board likewise dealt with the effect of a non-

carry-over of a majority of the work force as effecting a finding of successorship. In that case, none of the predecessor's employees were hired. The Board stated:

"We think that where, as here, the only substantial change wrought by the sale of a business enterprise is the transfer of ownership, the individuals employed by the seller of the enterprise must be regarded as 'employees' of the purchaser as that term is used in the Act. Such individuals possess a substantial interest in the continuation of their existing employee status, and by virtue of this interest bear a much closer economic relationship to the employing enterprise than, for example, the mere applicant for employment in the *Phelps Dodge* case (*Phelps Dodge Corp. v. N.L.R.B.*, 313 U.S. 177)."

In the remedy portion of *Chemrock*, the Board further states:

"Moreover, it is clear that if respondent had honored its bargaining obligation and not infringed upon the employees' statutory rights, . . . the drivers would not have been terminated without the protection afforded them through collective bargaining with their union about their wages and the continuation of their employment. They would have retained their jobs at least until respondent had completely fulfilled its bargaining obligation, and it is well within the realm of possibility that as a result of such bargaining they might not have been terminated at all."

We submit that the Board has stated definitively through *Chemrock* that where there exists otherwise a

substantial similarity in the employing enterprise before and after the transfer of ownership, the purchaser is obliged to bargain with the incumbent union before it terminates or otherwise changes the employment status of the predecessor's employees. If the purchaser fails to fulfill this obligation to bargain, it will be presumed that had he done so, he would have hired the predecessor's employees and the criterion of substantial continuity of employee complement will have been satisfied and he would succeed to the bargaining obligation of the predecessor. The Respondent Board's decision in the instant case in effect reverses *Chemrock* without explanation.

In this connection, it should be recalled that Lloyd Coates who did the hiring for Respondent Thomas testified as follows in his deposition: that he interviewed about a hundred employees including all of the personnel that worked under General Motors; that he looked particularly for loyal honest employees with good mechanical background; that he did not find any persons who failed to meet these qualifications; that outside of two employees who were over sixty years of age, and one other employee who advised that he would not be available for work for a period because he was leaving town, he could not recall any other specific factor that disqualified persons on the payroll of Cadillac from employment under Thomas. The testimony of Ehlers in this regard was similar. The Trial Examiner appropriately states at Tr. Vol. I, p. 35:

“ . . . the record is barren of any competent or persuasive proof that . . . General Motors employees would have been unable to perform the tasks assigned to them.”

In *Retail Clerk's Union (Norm's IGA)*, 61 LRRM 1123, the Wisconsin Employment Relations Board found successorship in a situation where the purchaser took over the operation of a retail food store. The purchaser commenced operations *with a new work force* and under his own business name. The Board said:

"The fact that IGA commenced operations with a new work force and with its own name does not indicate a lack of substantial continuity of identity in a business enterprise. So far as operating under its own name is concerned, we do not decide such fact to be of any significance. *The test relating to continuing identity relates to whether the new employer operates the same or similar type business using the same or similar type work force.*" (Emphasis added).

The decisions in *Chemrock*, *Youngs' Supermarket*, and *Norm's* above, are premised on the well established doctrine that an employer will not be permitted to bottom a good faith doubt as to the continued majority status of a union upon a loss of majority which results from the activities of the employer. *Franks Bros. v. N.L.R.B.*, 321 U.S. 702; *Medo Photo Corp. v. N.L.R.B.*, 321 U.S. 678. We submit that to permit a sophisticated employer to subvert a certification and a collective bargaining agreement by the simple device of hiring a majority of personnel not formerly on the payroll of the seller, would be to bring about this undesired result, directly contrary to the teachings of *Wiley v. Livingston*, 376 U.S. 543 and the numerous court and Board pronouncements in this important area.

See: *Zdanok v. Glidden*, 288 F. 2d 99 (C.A. 2) to some effect.

III.

Conclusion.

We submit that balancing the interests of the employees on the payroll of General Motors in positions held in some cases for fifteen to twenty years, as against the inconvenience to Respondents in recognizing and negotiating with the bargaining agent of such employees, in this situation where both purchasers were aware of the labor agreement prior to their purchases, the policy of the law correctly requires that the purchasers correct the wrong for which they were responsible.

Petitioners respectfully submit that the decision and order of the respondent Board be vacated and that the recommended order of the trial examiner be accepted and affirmed in its entirety.

Respectfully submitted,

HERBERT M. ANSELL,
ABE LEVY,
PLATO E. PAPPS,

Attorneys for Petitioners.

No. 21972

FILED NOV 6 1958

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

CLERK

J. Paulson

INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT LODGE 94,
AFL-CIO; and AUTOMOTIVE, MARINE, PRODUCTION FINISHERS,
EQUIPMENT MAINTENANCE AND PUBLIC SERVICE PAINTERS, LOCAL
UNION 1798, BROTHERHOOD OF PAINTERS, DECORATORS AND
PAPERHANGERS OF AMERICA, AFL-CIO, Petitioners

v.

NATIONAL LABOR RELATIONS BOARD, Respondent

and

THOMAS CADILLAC, INC.; and LOU EHLERS CADILLAC, Interveners

ON PETITION TO REVIEW AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

ARNOLD GRIMAN,

General Counsel,

DOMINICK L. MANOLI,

Associate General Counsel,

MARCEL MALET-PROVOST,

Assistant General Counsel,

FRANK H. ITAIN,

RICHARD W. GILMAN,

Attorneys

National Labor Relations Board

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UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21,972

INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT LODGE 94,
AFL-CIO; and AUTOMOTIVE, MARINE, PRODUCTION FINISHERS,
EQUIPMENT MAINTENANCE AND PUBLIC SERVICE PAINTERS, LOCAL
UNION 1798, BROTHERHOOD OF PAINTERS, DECORATORS AND
PAPERHANGERS OF AMERICA, AFL-CIO, Petitioners

v.

NATIONAL LABOR RELATIONS BOARD, Respondent
and

THOMAS CADILLAC, INC.; and LOU EHLERS CADILLAC, Intervenors

ON PETITION TO REVIEW AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

ISSUES PRESENTED FOR REVIEW

The issues presented, as stipulated by the parties in the prehearing conference stipulation (J.A. 1151), are set forth at pp. 1-2 of petitioners' brief. In accordance with Rule 8(d) of the General Rules of this Court, the Board states that this case has not previously been before the Court.

COUNTERSTATEMENT OF THE CASE

This case is before the Court on the petition of International Association of Machinists, District Lodge 94, AFL-CIO (Machinists Union), and Automotive, Marine, Production Finishers, Equipment Maintenance and Public Service Painters, Local 1798, Brotherhood of Painters, Decorators and Paperhangers of America, AFL-CIO (Painters Union) to review and set aside an order of the National Labor Relations Board issued under Section 10(c) of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. Sec. 151, *et seq.*). The Board's Decision and Order issued on March 29, 1968, and is reported at 170 NLRB No. 92 (J.A. 54-62, 10-53).¹ The Court has jurisdiction over the proceedings under Section 10(f) of the Act, and has granted Thomas Cadillac, Inc. and Lou Ehlers Cadillac, respondents in the proceedings before the Board, leave to intervene.

I. THE BOARD'S FINDINGS OF FACT

The Board dismissed a complaint alleging that Thomas Cadillac, Inc. and Lou Ehlers Cadillac, as successor employers, violated Section 8(a)(1) and (5) of the Act by failing to recognize and bargain with the petitioner Unions. The essentially uncontradicted evidence is summarized below.

A. General Motors' Retail Business in Los Angeles

Cadillac Motor Car Division is an unincorporated division of General Motors Corporation which manufactures Cadillac automobiles, parts, and accessories (J.A. 935). Prior to May of 1965, the Cadillac Division of

¹"J.A." references are to the Joint Appendix filed by the parties. References preceding a semicolon are to the Board's findings; succeeding references are to the supporting evidence.

General Motors (GM) operated a retail branch in Los Angeles for the sale and servicing of Cadillac cars, parts, and accessories. The Los Angeles Branch opened in 1949 with a sales and service outlet at 1076 West Seventh Street at Bixel (Bixel), followed in 1954 by the opening of a similar outlet at 5151 Wilshire Boulevard (Wilshire) (J.A. 56, 13; 214-215). Included in the Los Angeles Branch was a used car lot at South Vermont, where GM sold used cars taken in trade at the Bixel and Wilshire outlets (J.A. 220-221).

On August 1, 1957, the Machinists Union, pursuant to a consent-election agreement, was certified as the bargaining representative for a *single unit* consisting essentially of all the shop employees, including painters, at both the Bixel and Wilshire outlets (J.A. 56; 214, 1104-1105). The Machinists and GM executed a collective bargaining agreement on October 17, 1957, to expire in October 1958, which covered the unit employees at *both* locations (J.A. 56, 14; 1025-1026). On November 6, 1958, the Painters Union, after a Board-conducted election, was certified as the bargaining representative for a *single unit* of auto body painters at both the Bixel and Wilshire outlets (J.A. 56, 14; 1107-1113). Thereafter, the Painters and Machinists Unions bargained jointly with GM for a *single contract* covering *both* certified units (J.A. 57, 15; 577-579, 948-949, 953). The last contract was executed on December 1, 1964, and was to remain in "full force and effect without change until December 1, 1967" (J.A. 57, 15; 634).

The agreement covering the two locations provided, *inter alia*, for common wages, fringe benefits, and grievance procedures (J.A. 57; 590-631, 633, 635, 637-639). Common seniority lists were maintained by

occupation, and there was no loss of seniority in transfers between occupations under the conditions set forth in the contract (J.A. 57; 598-601). In addition, an employee's seniority was made applicable to both locations with respect to layoff procedures after the first 30 days of layoff (J.A. 601-602). An employee continued to accrue seniority while employed in any GM plant on national defense work, and holiday, vacation, and paid absence eligibility computations were based upon employment in any GM plant (J.A. 62; 607-608, 613, 622-623). The contract also included GM's National Pension Plan, Insurance Program, and Income Security Plan (J.A. 62; 635).

As integral parts of GM's Los Angeles Branch, the Bixel and Wilshire outlets shared some common management and administrative officers, since GM maintained personnel who performed functions for the whole Branch. Located at Bixel was a general manager in charge of both outlets; a central accounting office with a single supervisor of accounting; and a Branch controller, credit manager, personnel manager, and purchasing agent. The Branch manager was the highest local authority over the two outlets and reported directly to GM's Cadillac Division in Detroit. A number of the top management, including the managers for each outlet, were on the payroll of Cadillac headquarters in Detroit (J.A. 61-62, 18-19; 206-214, 226).

B. General Motors' Cadillac Division Discontinues Its Los Angeles Retail Operations

In January of 1965, GM decided to withdraw from the retail sale and service of Cadillac cars in Los Angeles and to transfer such operations to independent franchise dealers. Accordingly, in early 1965, GM informed the Machinists and Painters Unions of its intention and subsequently bargained with them on this matter (J.A. 57, 60, 17; 300-301, 957-978,

1075-1081). On April 28, 1965, in anticipation of GM closing its Bixel and Wilshire outlets, the parties reached a supplemental agreement relative to the rights of GM employees (J.A. 60-61; 978-979, 1082-1083, 1126-1127). On May 10, 1965, GM informed the Unions by letter that on June 1, 1965, Thomas Cadillac, Inc. would take over the Bixel location, and Lou Ehlers Cadillac would take over the Wilshire location (J.A. 57, 17; 967, 1081).² About a week later, the Unions separately requested Lou Ehlers Cadillac and Thomas Cadillac to meet with them to "clarify the rights of the employees" of GM (J.A. 57, 17-18; 642-643, 719-720). Ehlers Cadillac informed the Unions that the request was premature (J.A. 57; 1131-1132), while Thomas Cadillac did not answer the request (J.A. 261-262).

On May 28, 1965, GM terminated all employees at its Bixel and Wilshire locations, and its South Vermont used car lot (J.A. 57; 143, 153, 218). Prior to May 28, GM employed approximately 117 employees in the contract unit, referred to as "service departments." Seventy-five were employed at Bixel and 42 at Wilshire (J.A. 57, 18; 1121). All were union members, except for 2 mechanics and 1 painter at Bixel and 1 mechanic at Wilshire (J.A. 57, 18; 154).

C. The Operations of Thomas Cadillac, Inc., and Lou Ehlers Cadillac

On June 1, 1965, Thomas Cadillac and Ehlers Cadillac commenced operations as independent, competing franchises (J.A. 58; 301, 161-162, 185-186). In staffing their businesses, both employers considered former

²Thomas Cadillac, Inc. and Lou Ehlers Cadillac are both California corporations. Ehlers was incorporated on May 19, 1965. Thomas, since June 1, 1965, has maintained its offices and principal place of business at the Bixel location (J.A. 12; 422, 236, 239).

GM employees, as well as others; all persons interested were required to submit applications for employment (J.A. 58, 23; 162, 169, 281-282). Of the 63 service department employees hired by Thomas Cadillac, only 16 were former GM employees (J.A. 58, 23; 259, 279-280, 878). As of June 7, 1965, Thomas had a service department supervisory staff of 7, which included only 3³ former GM service department supervisors (J.A. 58; 243-245, compare 714-715 with 932, 159). A former GM used car salesman became an assistant used car manager for Thomas Cadillac, and the GM Branch supervisor of accounting became Thomas' business manager (J.A. 58; 243).

Ehlers Cadillac hired 11 former GM unit employees to be part of its service department staff of 35 (J.A. 58, 24-25; 445-447, 1119, compare 553-554 with 716). Ehlers' management consisted of Lou Ehlers as general manager, a business manager and general sales manager who had been with Ehlers' prior dealership, and the former GM-Wilshire manager who became Ehlers' new car sales manager (J.A. 58; 182, 423-424, 448-450, 573). In the service department, the service manager and foreman were not the same individuals who held those positions when GM operated the Wilshire outlet (J.A. 58, 25; 450-455, 573). Uncontroverted evidence showed that Thomas and Ehlers hired their employees solely on the basis of ability (J.A. 58-59, 23, 24; 193-194, 267, 278-279). Neither Thomas nor Ehlers has any employees who are also on GM's payroll; nor do they have any officers or directors in common with GM or each other (J.A. 161-162, 317).

As shown above, *supra*, p. 5, Thomas Cadillac and Ehlers Cadillac rejected or ignored the Unions' separate requests to clarify the rights of the

³Holderman, Dickerson, and Mickool.

GM employees and, in addition, declined their requests to arbitrate this issue under the GM contract (J.A. 17-18; 643-648, 725). Petitioner Unions did not, however, claim to represent a majority of Thomas' and/or Ehlers' service department employees (J.A. 198, 266-267, 642-648). The Unions subsequently filed the unfair labor practice charges which initiated the present proceedings. The Unions began picketing Thomas on June 7, and Ehlers on June 9, 1965. The parties stipulated that no former GM employee working for Thomas Cadillac or Lou Ehlers Cadillac refused to cross the picket lines (J.A. 23; 156-157).

II. THE BOARD'S CONCLUSION AND ORDER

On the foregoing facts, the Board found that Ehlers Cadillac and Thomas Cadillac, Inc. did not succeed to GM's bargaining unit.⁴ Accordingly, they had no obligation to bargain with the Unions with respect to terms and conditions of employment of employees formerly employed by GM or with respect to employees hired after taking over the separate dealer franchises. The complaint was therefore dismissed in its entirety (J.A. 58-59).⁵

⁴The Trial Examiner held that Thomas and Ehlers were successor employers to GM and, consequently, were required to recognize and bargain jointly with the petitioning Unions (J.A. 25-29, 36-42). The Board reversed the Examiner because it concluded from the foregoing evidence "that Thomas and Ehlers did not take over or succeed to GM's bargaining unit" (J.A. 55-59). The Examiner also held that both employers, as successors, were "bound by the collective bargaining agreement entered into by" GM and the Unions on December 7, 1964, and effective to December 1, 1967 (J.A. 29-36). Since the Board found that Thomas and Ehlers were not successors, it deemed it unnecessary to pass upon this and related findings and recommendations made by the Examiner (J.A. 59, n. 4). Cf. *Int'l Chemical Workers Union, Local 773 v. N.L.R.B.*, ___ App.D.C. ___, 395 F.2d 639 (1968).

⁵Board Members Jenkins and Fanning, in a separate concurring opinion, agreed that the complaint herein should be dismissed because Ehlers and Thomas were not successor employers. They, however, would "also rely on * * * evidence relating to

ARGUMENT

THE BOARD PROPERLY FOUND THAT THOMAS CADILLAC, INC. AND LOU EHLERS CADILLAC WERE UNDER NO OBLIGATION TO RECOGNIZE THE MACHINISTS AND PAINTERS UNIONS AS BARGAINING REPRESENTATIVES OF THEIR RESPECTIVE EMPLOYEES

Section 8(a) (5) of the Act, read together with Section 8(d), requires an employer to bargain collectively with the representative of his employees "with respect to wages, hours, and other terms and conditions of employment." Section 9(a) further provides that "[r]epresentatives designated or selected for the purposes of collective bargaining by the majority of employees in a unit appropriate for such purposes, shall be the exclusive representatives of all such employees in such unit * * *."

It is settled law, as petitioner Unions assert in their brief (Pet. Br., pp. 31-32), that if the transfer of assets and employees from one employer to another leaves substantially intact the identity of the employing enterprise, then the former's statutory duty to recognize and bargain with an incumbent representative devolves upon the latter as a "successor employer". In short, the "obligation to bargain * * * binds a successor employer [and] a mere change in ownership is not so unusual a circumstance to affect certification." *N.L.R.B. v. Auto Ventshade, Inc.*, 276 F.2d 303, 304 (C.A. 5, 1960). And see, *Int'l Chemical Workers Union, Local 773 v. N.L.R.B.*, ___ U.S.App.D.C. ___, 395 F.2d 639 (1968); *Makela Welding Co. v. N.L.R.B.*, 387 F.2d 40, 46 (C.A. 6, 1967); *Overnite Transportation Co. v. N.L.R.B.*,

those events and actions of the parties both before and after Thomas and Ehlers commenced operations * * *" (J.A. 60-62). Thus, for example, the concurring Members deemed significant "that the transfer of operations were bona fide business transactions * * *"; "that prior to the transfer GM * * * notified * * * and bargained with the Unions regarding the change"; and that "the day-to-day operation practices of Thomas and Ehlers differ not only from each other but from GM" (J.A. 60-61).

372 F.2d 765, 768 (C.A. 4, 1967), cert. denied, 389 U.S. 838 (1967). It is, however, equally settled that "implicit in the duty of the employer to recognize the majority's representative of his employees as the exclusive bargaining representative, is the correlative duty to deal with no agent other than that chosen by the majority [and] to make sure that the representative does in fact represent a majority of the employees." *Int'l Ladies' Garment Workers' Union v. N.L.R.B. (Bernhard-Altmann)*, 108 App. D.C. 68, 72-73, 280 F.2d 616, 620-621 (1960), affirmed, 366 U.S. 731 (1961). As this Court recently stated in an analogous situation, "* * * substantial change in the enterprise which is accompanied by a change in employee personnel sufficient to justify a reasonable doubt concerning the continued majority, is a valid premise for a Company's demand for assurance on the point * * *." *Int'l Union, United A., A., Imp. Wkrs. v. N.L.R.B.*, ___ App. D.C. ___, ___, 394 F.2d 757, 762 (1968), cert. denied, ___ U.S. ___ (1968). For, the

* * * controlling question here * * * is whether the new owner[s] may rationally be said in substance, as to the unit in question, to have taken over and succeeded to [their] predecessor's employees. If [the new owners have] not—if, on the contrary [they instead have] within the unit in question secured [their own] employees—then [they are] not, as to the employees in question, a successor. * * * In such cases, both the employer[s] and the employee unit are strangers to the certification and to the election upon which it was based. * * *

N.L.R.B. v. John Stepp's Friendly Ford, Inc., 338 F.2d 833, 835-836 (C.A. 9, 1964).

Here, the Board applied the foregoing principles to the essentially uncontroverted evidence, and held "that Thomas and Ehlers did not take

over or succeed to GM's bargaining unit. * * * [N]either employed a significant number of service employees who had worked for GM, and the supervisory hierarchy bears little resemblance to that formerly existing under GM. Moreover, it is clear that both Thomas and Ehlers selected their employees herein involved on the basis of skill and ability, and were in no way influenced by union membership of the job applicant" (J.A. 58-59). We demonstrate hereinafter that substantial evidence in the record supports this determination and, "in balance, the Board's resolution is far from irrational." *International Chemical Workers Union, Local 773 v. N.L.R.B.*, *supra*, ___ U.S.App.D.C. at ___, 395 F.2d at 640, 641 n. 1.

As shown in the Counterstatement (*supra*, pp. 3-4), when the Cadillac Division of General Motors owned and operated the Bixel and Wilshire outlets, the Machinists Union was the duly elected and certified representative of a single unit of "shop employees" at both locations. Similarly, the Painters Union was the duly elected and certified representative of a single unit of "painters" at both locations. In practice, General Motors and the Unions regarded the two locations, in effect, "as a single multi-plant unit" (J.A. 57). Thus, one contract covered both facilities, which provided for common wages, fringe benefits, and grievance procedures. It incorporated the employer's national pension, insurance, and income security plans. Common seniority lists were maintained by occupation, and there was no loss of seniority in transfers between occupations. Employee seniority was made applicable to both locations with respect to layoff procedures. Moreover, as integral parts of General Motors' Los Angeles Branch, both locations shared common management and administrative officers.⁶

⁶ As shown *supra*, p. 4, located at the Bixel facility was a general manager in charge of the Los Angeles Branch; a central accounting office with a single supervisor

After General Motors terminated its retail sale and service of Cadillac cars in Los Angeles, the above multi-location or multi-plant unit ceased to exist (*supra*, pp. 5-7). The two facilities, which had previously been part of GM's Los Angeles Branch, became independent, competing businesses. Each dealership was thereafter independently owned and managed (J.A. 161-162, 224, 234-235, 423-424); each "established its own salaries, wages, hours and working conditions unrelated to those of General Motors" (J.A. 23-24; 188-189, 251-252, 266, 301-302, 803, 806).⁷ The supervisory per-

of accounting; and a Branch controller, credit manager, personnel manager, and purchasing agent. The Branch manager was the highest local authority over the two outlets and reported directly to GM's Cadillac Division in Detroit. A number of top management, including the outlet managers, were on the payroll of Cadillac headquarters in Detroit.

In addition, there was testimony below that overflow work would be moved from one outlet to another (J.A. 298-299, 309); used cars taken in trade at both locations were reconditioned at Bixel and then redistributed (J.A. 296-297); maintenance work for both facilities was handled out of Bixel (J.A. 211-212); and unit personnel and supervisors were transferred from one location to the other in "the case of vacations or other long absences * * *" (J.A. 299).

⁷As the two concurring Board Members emphasized, "the day-to-day operational practices of Thomas and Ehlers differ not only from each other but from GM" (J.A. 61-62). GM's Los Angeles outlets, unlike those of Ehlers and Thomas, "were intimately tied in with its entire nationwide manufacturing and sales operations" (J.A. 61). Thus, for example, GM placed from its headquarters in Detroit insurance for the Los Angeles Branch outlets (J.A. 217); selected lawyers for them (J.A. 218); conducted bargaining negotiations (J.A. 934-937); approved capital improvements (J.A. 218); and financed a large proportion of its sales through its own affiliate, GMAC (J.A. 314).

On the other hand, Thomas and Ehlers each provide for themselves independently. For example, each obtained new licenses (J.A. 174-175, 262); retained its own lawyers; arranged financing through new sources; and let its own service contracts (J.A. 183, 185, 264-265, 314). Some services were discontinued and others begun (J.A. 177-178,

sonnel at the two dealerships bore little resemblance to that formerly existing under GM.⁸ And there was a substantial change in the former GM unit personnel. Thus, Ehlers Cadillac hired only 11 former GM employees to its service department staff of 35; Thomas Cadillac Inc. hired only 16 former GM service department employees out of 63 new hires (*supra*, pp. 6-7). Petitioner Unions have never claimed to represent a majority of these employees, and uncontroverted evidence supports the Board's finding that Ehlers and Thomas hired their respective employees on the basis of skill and ability and were in no way influenced by the union memberships of job applicants (*supra*, p. 6).⁹ Cf., *N.L.R.B. v. John Stepp's Friendly Ford, Inc.*, *supra*; *Int'l Union, United A.A. Imp. Wkrs. v. N.L.R.B.*, *supra*, ___ App. D.C. at ___, 394 F.2d at 762; and *K.B. & J. Young's*

184, 256). Numerous other daily business matters, including wage rates and labor policies, were handled independently by the two competing franchises (J.A. 184-189, 264-266). Thomas and Ehlers do not interchange personnel or overflow work as did Bixel and Wilshire; nor are they part of a common used car operation (J.A. 301, 177, 220-221). They are now among some 17 Cadillac franchise dealers in competition with each other in the Los Angeles area (J.A. 178-179, 261, 264).

⁸As shown above (*supra*, p. 6), on June 7, 1965, Thomas had a supervisory staff of 7 which included only 3 former service department supervisors. Ehler's management consisted of himself as general manager, business and general sales managers who had been with him before, and a former GM-Wilshire manager who became new car sales manager; the service manager and foreman in the service department were not the same persons who held those positions at GM's Wilshire outlet.

⁹There was no allegation below of discrimination in the hiring of former GM employees in order to escape an obligation to bargain with both Unions (J.A. 326-327, 329-331, 333-335, 337-339). Moreover, as shown, the Board and Examiner explicitly found that new employees were in fact hired on the basis of skill and ability and not union affiliation (J.A. 58-59, 23-24). Petitioners now imply in their brief (Pet. Br., pp. 17, 18, 30, 43) that Thomas and Ehlers did not have a legitimate reason for not hiring former GM employees. This contention, not previously advanced before the Board, is now untimely and unsupported by the record. Cf., *Retail Clerks Int'l Ass'n, Local 380 v. N.L.R.B.*, 125 App.D.C. 63, 68, 366 F.2d 642, 647 (1966).

Supermarkets, Inc. v. N.L.R.B., 377 F.2d 463 (C.A. 9, 1967), cert. denied, 389 U.S. 841.

Petitioners, in their brief to the Court (pp. 31-46), rely upon numerous Board and court cases where successorship was found to exist. Those cases, however, are readily distinguishable because, *inter alia*, the purchasers' unit employees included a substantial number of the sellers' complement, or the purchasers prevented the old employee complement from transferring by independent unfair labor practices. See, e.g., *K.B. & J. Young's Supermarkets, Inc. v. N.L.R.B.*, *supra* (cited at pp. 43 and 46 of petitioners' brief) where the court distinguishes *John Stepps' Friendly Ford, Inc. v. N.L.R.B.*, for, *inter alia*, these reasons. As shown above, these elements are not present here. Moreover, the Board in the instant case properly relied upon such factors as the substantial change in the identity of the employers' work forces and the bifurcation of the previously certified multi-plant unit. Indeed, to ignore such factors, as petitioners contend, would deprive the employees of Ehlers and Thomas of their Section 7 rights "to bargain collectively through representatives of their own choosing" or "to refrain from any or all such activities." Cf., *International Ladies' Garment Workers' Union, AFL-CIO v. N.L.R.B.*, 366 U.S. 731, 737 (1961).

In sum, the "principle here involved is whether the acquired business retained its identity and continuity to a degree making it reasonable to require the successor employer to recognize" the petitioning Unions; with the above "considerations in balance, the Board's resolution is far from irrational". *Int'l Chemical Workers Union, Local 773 v. N.L.R.B.*, *supra*, ___ App. D.C. at ___, 395 F.2d at 640, 641 n. 1.¹⁰

¹⁰ Although the Board reversed the Trial Examiner, the pertinent facts were essentially uncontradicted; no credibility resolutions were disturbed; the disagreement related

CONCLUSION

For the reasons stated, the petition for review of the Board's order should be denied.

ARNOLD ORDMAN

General Counsel,

DOMINICK L. MANOLI,

Associate General Counsel,

MARCEL MALLET-PREVOST,

Assistant General Counsel,

FRANK H. ITKIN,

RICHARD N. CHAPMAN,

Attorneys,

National Labor Relations Board.

November 1968

solely to the proper inferences to be drawn from the record and the interpretation of the law. In such cases, "the presumptively broader gauge and experience of members of the Board have a meaningful role." *Oil, Chemical & Atomic Workers Int'l Union Local 4-243 v. N.L.R.B.* 124 App.D.C. 113, 115-116, 362 F.2d 943, 946 (1966).

PETITIONERS' REPLY BRIEF.

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21,972

INTERNATIONAL ASSOCIATION OF MACHINISTS,
DISTRICT LODGE 94, AFL-CIO; and AUTOMOTIVE
MARINE, PRODUCTION FINISHERS, EQUIPMENT,
MAINTENANCE AND PUBLIC SERVICE PAINTERS
LOCAL UNION 1798, BROTHERHOOD OF PAINTERS,
DECORATORS AND PAPERHANGERS OF AMERICA,
AFL-CIO,

Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent,

THOMAS CADILLAC, INC. and LOU EHLERS CADILLAC,

Intervenors.

ON PETITION TO REVIEW AND SET ASIDE AN ORDER
OF THE NATIONAL LABOR RELATIONS BOARD.

United States Court of Appeals
for the District of Columbia Circuit

HERBERT M. ANSELL,
1336 Wilshire Boulevard,
Los Angeles, California 90017,

FILED NOV 21 1968

ABE LEVY,
1520 Wilshire Boulevard,
Los Angeles, California 90017,

PLATO E. PAPPS,
1300 Connecticut Avenue,
Washington, D. C.,

CLERK

Attorneys for Petitioners.

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NATIONAL LABOR RELATIONS BOARD,

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Intervenors.

ON PETITION TO REVIEW AND SET ASIDE AN ORDER
OF THE NATIONAL LABOR RELATIONS BOARD.

PETITIONERS' REPLY BRIEF.

INTRODUCTION.

The essential contentions raised collectively in the briefs of Respondent Board, Ehlers and Thomas are as follows:

1. Bargaining with the Petitioner Unions should not be ordered inasmuch as the Certified Unit and the Contract Units were at variance.

2. Petitioner Unions did not demand recognition as bargaining agent, and even assuming they did, the demand was not for an appropriate unit.

3. The fact that a majority of the G.M. employees and supervisors were not carried over into Respondent's operations is critical inasmuch as it was never proven that the Respondents denied employment because of anti-union animus.

4. Although the trial examiner's decision ordinarily is entitled to great weight, such would not be true in this case, inasmuch as the evidence was uncontradicted.

I.

The Fact That the Contract and Certified Units Were at Variance Does Not Excuse Ehlers and Thomas From Its Duty to Bargain.

Much stress is placed on the fact that the parties, in their contracts made minor modifications as to the unit certified in the elections; that these modifications continued from 1954 until May, 1965, the date that G.M. transferred the operations to Ehlers and Thomas, and that furthermore, the two units since the succession are divided by location and separate corporate ownership. It is contended that somehow the facts excuse the employers from the Duty to Bargain.

It has been held repeatedly that the Board will permit departure from a certification unit composition provided that the departure is not substantial. *Calaveras Cement Co.*, 89 NLRB No. 378, 25 LRRM 1584.

Central Truck Lines, 98 NLRB No. 374, 29 LRRM 1352. Likewise it has been held that where parties by contract history manifest a desire to change a Board certified unit from a plant to company wide or vice-versa, this would not destroy the integrity of the unit.

In *General Motors Corp.*, 120 NLRB No. 1215, 42 LRRM 1144, Petitioner Unions filed for a craft sever-

ence election limited to individual locations of G.M. Single plant elections had originally been held in the one hundred and twenty plants of G.M. However, historically, the bargaining took the form of one set of negotiations covering all of the plants culminating in a single G.M. Contract nationwide in scope. Furthermore, historically the labor agreements were required to be ratified by a majority of all employees, corporate-wide. The Board, in holding that the appropriate unit was a single company wide bargaining unit embracing all of the company's plants, stressed that bargaining history was controlling in determining the appropriateness of a unit. The Board in this connection stated at page 1220:

"The Board has frequently held that bargaining of this type, which obliterates the previously existing units based upon Board's Certifications is a permissible avenue for the course of labor-management relations . . ."

In *Star Union Products Co.*, 127 NLRB No. 1173, 46 LRRM 1181, a single plant unit was held appropriate where supported by bargaining history even though the labor relations policies, employee benefits, transfer of employees and retention of seniority on transfer was centrally administered. Likewise was the case in *Thompson-Ramo Wooldridge Inc.*, 128 NLRB 236, 46 LRRM 1277, even though it was found that some degree of inter-relation existed among the several company plants. In *Univak Division of Remington Rand Division of the Sperry Rand Corp.*, 137 NLRB 1232, 50 LRRM 1371, a certified unit at two locations was found inappropriate where the employer and union

had bargained for a substantial period of time on the basis of a multi-plant unit.

Highlighting the flexibility afforded to its treatment of bargaining units, the Board in *Baltimore Transit Co.*, 92 NLRB 688, 27 LRRM 1148, stated at page 693:

“As a matter of policy, the Board is ordinarily reluctant to disturb a prior unit determination or a *contract unit established as a result of collective bargaining*, in the absence of compelling circumstances. A bargaining history or a prior Board determination, however, does not preclude correction of errors or alteration of units to adjust to change in circumstances.” (Emphasis added).

The Trial Examiner in his decision characterized the difference between the certified and contract units as “unit descriptions which were incorporated into labor agreements without substantial variance”. The Board did not comment upon the slight difference in the units at all in support of its decision. Even assuming that such claim had any merit whatsoever, it is obviously not timely raised.

Petitioner Unions Requested Recognition in Units Described With Sufficient Particularity and the Intervenor Companies by Their Outright Refusal to Bargain Now Precluded From Asserting That the Units Were Inappropriate.

Case law is clear that where an employer upon whom a demand is made simply chooses to ignore the union and does not communicate any doubt he has as to the

appropriateness of the unit, he will be estopped from asserting such doubt as a defense to a charge of refusal to bargain. In *Joy Silk Mills v. NLRB*, 185 F. 2d 732, 741, the Court stated:

“The Labor-Management Relations Act is not a statute of frauds or an Act prescribing the formalities of a conveyancing. No seal is required by these terms. Nor is any formula or a form of words.”

In *Inter City Advertising Co. v. NLRB*, 190 F. 2d 420, 422, the Court stated:

“Where the real attitude of an employer is that he will not bargain collectively with his employees under any conditions, he cannot excuse himself upon the ground that sufficient proof of a majority status was not furnished him (citing cases). *This holding applies in equal force to the second excuse of the company that the Guild constituted an appropriate unit for bargaining purposes.*” (Emphasis added).

At page 421, the Court further states:

“It is argued that the refusal to bargain was justified because the Respondent did not know that the bargaining units were proper nor that the Union had achieved a majority status; that the propriety of the bargaining units was a matter for the Board . . . *Respondent . . . made no attempt to ascertain whether or not the Union represented a majority of the employees in an appropriate unit but declined to bargain when request was made by the Union.*” (Emphasis added).

Likewise in *NLRB v. Biles Coleman Co.*, 98 F. 2d 18, 22 where a Union made demand for bargaining without specifying the unit. The Court stated:

“Nor is it a defense to point out that the Union . . . did not claim to be the representative of the sawmill and factory employees only as distinguished from all Respondent’s workers. *Respondent made no objection to the contract on the basis of the propriety of the unit for which was being presented. The Board was entitled to draw the inference that Respondent’s refusal to negotiate with the Union was motivated not by doubt as to the appropriate unit, but by a rejection by the collective bargaining principle.*” (Emphasis added).

In *Atkinson Dredging Co.*, 141 NLRB 1316, the Union had sought bargaining and forwarded a sample copy of a contract to the employer. The Respondent company never called to the attention of the Union that there were inclusion of categories of employees in the contract which the Board had excluded. Rejecting the employer’s defense to the bad faith bargaining charge, the Board stated at page 1321:

“Had the sample contract actually raised any question in the Respondent’s mind concerning the scope of the unit claimed by the Union, the question could have then been readily resolved in accordance with the clear limitations of the certification. *But the Respondent continued simply to ignore the Union’s subsequent bargaining request and thus refused to bargain with the Union without even referring the Union to the scope of the sample form of contract or to any other reasons as the basis of its refusal to bargain.*” (Emphasis added).

The Board thus concluded that the company's claim of improper unit was untenable without "*. . . first calling to the Union's attention the discrepancies between the sample contract and the limited scope of the certified union.*" (Emphasis added).

In *Daniel Crean dba Grand Food Market*, 139 NLRB 73, 89, the Board holding in effect that the employer was estopped to question the appropriateness of the unit, stated:

"*. . . Since Respondents denial of the bargaining request . . . did not clearly question the composition and scope of the proposed unit, but merely the Union's majority in it, and . . . they did not raise the unit question until their answer herein, it appears that this defense came too late to warrant a conclusion that it was raised in good faith.*" (Emphasis added).

In *United Birchers Abelloir, Inc.*, 123 NLRB at page 957 the Board stated similarly:

"*If the Respondent had doubts as to the scope and composition of the proposed unit, it raised no question with respect to these issues at the time of the Union's demand for recognition. It simply turned down the Union's demand without giving any reasons therefor. The Respondent's objection as to the scope and composition of the unit raised for the first time at the hearing, comes too late to convince us that its refusal was based upon some bona fide doubt as to the appropriateness of the unit.*" (Emphasis added).

wish. *It is obvious that what the Intervenorors really desired was to avoid recognition of the Unions in any event, regardless of unit, and that the claim asserted at this time is in the nature of post rationalization.*

By the same token, the claim of Ehlers that he desired elections conducted by the Board and that such was resisted by the Unions is of no avail. One can understand the reticence on the part of the Union to abandon their claims to successorship and undergo an election months after the change-over in ownership at which time the great bulk of the employees were of non-union character and not those covered by the GM contract. Faced with the bargaining demand, and with full knowledge of the existence of the labor agreements when they signed the contracts with GM, Ehlers and Thomas had ample opportunity to recognize and negotiate with the Unions while at the same time petitioning for an election had they entertained an honest doubt as to the Union's majority status. The fact that the Unions filed charges in June, 1965 does not obviate this fact. The Intervenorors at that time presumably could not have known whether such charges would be found to be meritorious. Any delay in the election process would be of a temporary nature until the charges were resolved.

II.

The Board Erred in Reversing the Trial Examiner's Decision Because Such Decision Was Based Partly on Credibility Determinations and Supported by Findings Which Were Never Overruled by the Board.

The inter-relationship between the Trial Examiner's Decision and that of the Board's has been carefully considered in numerous decisions. In *NLRB v. Georgia Rug Mill*, 308 F. 2d 89, 93, 51 LRRM 2147 (CA-5), the Court stated:

"... The Examiner's findings must be considered along with the record as a whole in determining whether there is substantial evidence to support the Labor Board's decision."

Amplifying this, the Court in *NLRB v. Walton Mfg. Co.*, 369 U.S. 404, 408, 82 S. Ct. 853, stated:

"... the Examiner . . . sees the witnesses and hears them testify while the Board and reviewing Court looks only at cold records. . . . The significance of his report . . . depends largely on the importance of credibility in the particular case. For the demeanor of the witness may satisfy the Tribunal not only that the witnesses' testimony is not true, but that the truth is the opposite of his story; for the denial of one, who has a motive to deny, may be uttered with such hesitation, discomfort, arrogance or defiance, as to give assurance that he is fabricating, and, if he is, there is no alternative but to assume the truth is what he denies."

In *NLRB v. Tom Johnson, Inc.*, 378 F. 2d 342, 344, 65 LRRM 2472 (CA-9), the Court stated:

“Where the Board does not accept the findings of the Trial Examiner, the Court has the obligation to examine the evidence and the findings of the Board more critically than if the Board and Trial Examiner were in agreement.”

In *Boeing Aircraft Co. v. NLRB*, 217 F. 2d 369, 375-376, the Court stated:

“The Board should have accepted his findings without additions, exceptions or modifications. He alone saw the witnesses, and his opportunity to appraise the general situation, the feeling of management and its employees together with the imponderables, cannot be paralleled by either this court or the Board. This court affirms the findings of the Intermediate Report in their entirety.”

In *NLRB v. Dal-Tex Optical Co.*, 325 F. 2d 78, 54 LRRM 2671 (CA-5), the Court stated at page 78:

“The Examiner made credibility determinations as to both the surveillance charge and the discriminatory discharges charged. We conclude that they should have been followed by the Board *in the absence of any substantial contravailing evidence.*” (Emphasis added).

In *Dobbs Houses, Inc. v. NLRB*, 325 F. 2d 531, 536, 54 LRRM 2726 (CA-5), the Court stated:

“We intend only to recognize that evidence supporting a conclusion may be less substantial when an impartial, experienced, Examiner who has observed the witnesses and lived with the case has drawn conclusions different from the Board’s than when he has reached the same conclusion.”

And again at page 537:

“The credibility determinations of the Board cannot be disturbed unless unsupported by substantial evidence on the record considered as a whole. *The Trial Examiner’s report is a part of the record as a whole which is to be considered.*” (Emphasis added).

And in *Flack v. NLRB*, 327 F. 2d 396, 400, 54 LRRM 2526 (CA-7), the Court stated:

“Nothing in the statutes suggests that the Labor Board should not be influenced by the Examiner’s opportunity to observe the witnesses he hears and sees and the Board does not. Nothing suggests that reviewing courts should not give the Examiner’s report such probative force as it intrinsically commands . . . *both statutes thus evince a purpose to increase the role of the Examiner’s in the administrative process.*” (Emphasis added).

Carefully examining the interrelationship between the Trial Examiner and the Board, this court is in *Retail Store Employees Union v. NLRB*, 360 F. 2d 494, 123 App. Div. D.C. 360 pointed out at page 495:

“Contrary to the Trial Examiner, we believe the facts and circumstances on which he relies . . . do not on the record as a whole support a finding of a conspiracy . . . to violate the Act.”

This Court then in rejecting such findings, states at page 495:

“. . . here the Board had done no more than simply state its belief that the facts and circumstances relied upon by the Trial Examiner do not on the record as a whole support a conspiracy finding.”

And again at page 495:

“The Board . . . adopts the finding of the Trial Examiner only to the extent consistent with its decision. Since the Trial Examiner’s findings are abundantly supported by the evidence, this manner in which the Board intertwined acceptance and rejection of his findings, making none of its own as required by statute, leaves this court without the help necessary for review.

To perform our function we are entitled to more help from the Board in order to intelligently pass judgment upon its decision.” (Emphasis added).

In the instant case the Trial Examiner and the Respondent Board viewed the critical findings aspects of successorship as follows:

1. The Trial Examiner found that the Wilshire and Bixel locations under GM “possessed independent performance capability and were self-contained and self-supporting from the standpoint of equipment, tools and other materials [Tr. Vol. I, p. 19]. He detailed several findings from the evidence in support of this ultimate finding. Thus he concluded that the units were sufficiently separate and distinct under GM so that they did not become obliterated after the take-over by Ehlers and Thomas. The Respondent Board never contraverted the above statements but simply stressed that the agreement under GM covered the two locations and provided for common seniority lists, common fringe benefits, grievance procedures, and no loss of seniority as a result of inter-company transfer. The Board concluded “In other ways the contract provisions treated the two branches as a single multi-plant unit.” [Tr. Vol. I, p. 57].

2. The Trial Examiner detailed the essential elements of the contract between GM on the one hand and Ehlers and Thomas on the other from the standpoint of evidencing the strong residue of control held by GM over the manner in which the two locations would be operated and the policies to be formulated by Ehlers and Thomas. The agreement summarized in Volume 1 [pp. 20-23], supports the Examiner's finding that there would be assured "a continuation of the operations of the two branches along lines compatible with GM's directions and prior policies." [Tr. Vol. I, p. 26].

The Respondent Board did not see fit to even mention any of the contents of the comprehensive agreements between GM and the intervenor companies.

3. Regarding the dealership operations after the sale, the Trial Examiner found that "these enterprises were continued at the same locations without substantial change, with the performance of substantially the same work by former GM employees. Any deviations from the precise practices or procedures of General Motors effected by the Respondent employers when they assumed operations were not of such a nature as to destroy the continuity and identity of the employing enterprise or alter the basic similarity of the Respondent employers' operations from those of General Motors." [Tr. Vol. I, p. 26].

The Respondent Board, after detailing the fact that the majority of the GM employees and supervisors were not carried over to the new dealerships, made absolutely no mention as to the manner in which the dealerships were operated following the respective sales.

4. With respect to the fact that the dealerships had not hired a majority of the GM employee compliment, the Trial Examiner found that "the record is barren of any competent or persuasive proof that . . . General Motors employees would have been unable to perform the task assigned to them." [Tr. p. 35]. Furthermore, he found that the GM employees at Wilshire were reviewed for hire at Ehlers ". . . with the object of selecting the most competent and satisfactory persons."* The Board in this connection stated: "Respondent's contention that employees were hired on the basis of ability is uncontroverted". And again at page 58: "Moreover, it is clear that both Thomas and Ehlers selected their employees here involved on the basis of skill and ability and were in no way influenced by Union membership of the job applicant." The trial examiner while not making an affirmative finding of Sec. 8(a)(3) in effect discredited the testimony of Ehlers on Thomas by finding that the GM employees could have capably performed the jobs. The Board in effect without any contraverting evidence found as a positive fact that the employers were not motivated by anti-union animus. Thus the Board in effect reversed the Trial Examiners on a matter of pure credibility.

5. The Trial Examiner found that as of May 11 and 12, 1965, the date that the succession contracts were signed between GM and the intervenors, the bargaining units were appropriate [Tr. Vol. I, p. 36]. The Board did not address itself at all to this question.

*The Trial Examiner characterized the evidence in this regard as to Thomas, as follows: "According to La Rue Thomas employees were hired on the basis of their ability." It's noted that both Thomas, Ehlers and their respective supervisors testified at the Board hearing.

6. The Trial Examiner found that the employers had knowledge at the time of signing their contracts that a collective bargaining agreement was in effect at both locations and that consequently they were under duty to bargain. The Trial Examiner found in this connection that Ehlers and Thomas impliedly consented to participate in bargaining as it existed at the time of the purchase, that the multi-establishment units continued as appropriate units for the purposes of collective bargaining after the succession, and that the employers were bound to bargain collectively and jointly with the Unions and such units. The Respondent Board did not address itself to this question at all.

7. The Trial Examiner found that the employers did not have any reasonable basis for believing the Union had lost its majority status since certification, and furthermore that any loss of majority which subsequently followed was due to the acts of the employers [Tr. Vol. I, pp. 40-42]. The Respondent Board did not address itself to this question.

8. With respect to the carry over of employees, the Trial Examiner found that had the employees honored the bargaining obligation, under the *Chemrock* case, the GM employees would not have been terminated without the protections afforded them by collective bargaining; would have retained their jobs at least until Ehlers and Thomas had completely fulfilled their bargaining obligations, and possibly they might have avoided being terminated at all; that therefore, "the alleged loss of majority may be attributed to the Respondent employer's refusal to assume their bargaining responsibilities, as successors" [Tr. Vol. I, pp. 41-42]. The Respondent Board, overruling *Chemrock sub si-*

lentio, did not even make mention of such decision and did not address itself to the question of the obligation by Ehlers and Thomas to bargain concerning the GM employees.

9. Finally, the Trial Examiner found that the critical date to test the question of majority was the date of succession, or May 11 or 12, 1965; that at that time the Unions beyond question represented virtually all of the employees in the bargaining unit and that the employer's claims of good faith doubt "sound of post-rationalization in the nature of defenses advanced to support a position which would have been pursued in any event". The Respondent Board at no time addressed itself to this question. It is noted that the evidence presented by Ehlers and Thomas concerning the alleged "good faith doubt as a basis upon which employees of the dealerships were hired, consisted of oral testimony from Louis Ehlers [Tr. Vol. I, p. 160, etc.], Irving Graham [Tr. Vol. I, p. 296, etc.]; LaRue Thomas [Tr. Vol. I, pp. 234-275] and Lloyd Coats [Tr. Vol. I, pp. 276-291]. *The Trial Examiner was in a superior position to receive and evaluate this testimony.*

It is clear that the Board as in the *Retail Store Employees Union v. NLRB* (*supra*) has simply adopted the findings of the Trial Examiner *holding* "only to the extent consistent with its decision"; and without specifically overruling any of his findings, has stated its belief that Ehlers and Thomas were not successors to GM essentially because (1) GM is a gigantic corporation while the former were relatively small corporations, and (2) The employer not having hired a majority of the work complement from GM, can now utilize its own unilateral action to defeat successorship. *In pure and*

simple fact, it is clear that the Board has virtually ignored the Trial Examiner's decision and has given absolutely no consideration to his findings.

A closely analogous situation is illustrated in *International Chemical Workers v. NLRB*, App. D.C., 395 F. 2d 639 (CA-DC, June 27, 1968). In that case, this court remanded to the Board the question of whether in the successorship case, the existing contract should be held incumbent upon the purchaser. This court stated at page 641:

"... especially in the light of *John Wiley & Sons v. Livingston* . . . this matter needs more illumination than the Board has provided in order for us meaning fully to review the disposition it has made of the matter here."

III

Conclusion.

The holdings in *Chemrock, KB&J Young's Supermarket, etc.* to the effect that successorship cannot be defeated where it otherwise exists, for the simple reason that a majority of the employees at the predecessor are not carried over, finds ample support in case law. In *Cooper Thermometer Co. v. NLRB*, 376 F. 2d 684 (CA-2), a company was found to be in violation of Section 8(a)(5) when it announced it was moving its location and refused to discuss with the Union the basis on which employees could transfer. The Court stated at page 688:

"The most important interest of workers is in working; the Board may reasonably consider that the employer does not fulfill his obligations under

Section 8(a)(5) if he refuses even to discuss with the employee representatives on what basis they may continue to be employed.” (Emphasis added).

And again at page 688:

“While Cooper was not bound to agree to the Union’s demand that the employees be taken . . . with everything unchanged, or even to less burdensome proposals, the Board could properly fault it for an attitude which in effect ousted the Union from any role in negotiating what might be offered to employees desiring to transfer.”

The cases stress, as in *Chemrock*, that the question of retention of employment is of sufficient magnitude to warrant subjecting it to collective bargaining, in the hopes that reasonable solutions can be reached. As stated in *Fibreboard Paper Products Corp. v. NLRB*, 379 U.S. 203, 214:

“Although it is not possible to say whether a satisfactory solution could be reached, national labor policy is founded upon the congressional determination that the chances are good enough to warrant subjecting such issues to the process of collective negotiation.

One of the primary purposes of the Act is to promote peaceful settlements of industrial disputes by subjecting labor-management controversies to the mediatory influence of negotiation. The Act was framed with an awareness that refusals to confer and negotiate had been one of the most prolific causes of industrial strife.”

The employer's action at refusing to meet or to acknowledge the existence of the petitioner unions but rather to hire employees by its own unilaterally imposed standards caused the change in personnel. The employer urges earnestly that there is no evidence that the hiring by the dealers was for anti-union reasons, and in support of such position urges that a Section 8(a)(3) complaint was not prosecuted before the Trial Examiner. Surely, the important question of succession of bargaining obligations, effecting as in the instant case large numbers of employees, often time of many years duration, cannot be made to turn upon the happenstance of whether sufficient evidence would be gathered against an employer to show a Sec. 8(a)(3) violation under the Act. To hold such would be to reward the sophisticated employer who by subtle means can select his work force with a view toward defeating the collective bargaining principle while at the same time avoiding the sanctions of the federal act. *We cannot conceive that the Respondent Board would urge that the bargaining obligation in this case be extinguished because a separate unfair labor practice could not be shown, although the record was barren of any evidence showing objectively any reason as to why the dealers did not hire the GM employees, while holding guilty an employer in a future case because he was more obvious in his manner of defeating collective bargaining.* The great principle of successorship, should not be subverted on such tenuous and fortuitous grounds. As the U.S. Supreme Court appropriately observed in *Carroll v. Lanza*, 349 U.S. 408, 413:

"we write not only for this case and this day alone, but for this type of case".

Petitioners respectfully submit that the Respondent Board's decision should be vacated, and the Trial Examiner's decision accepted in its entirety.

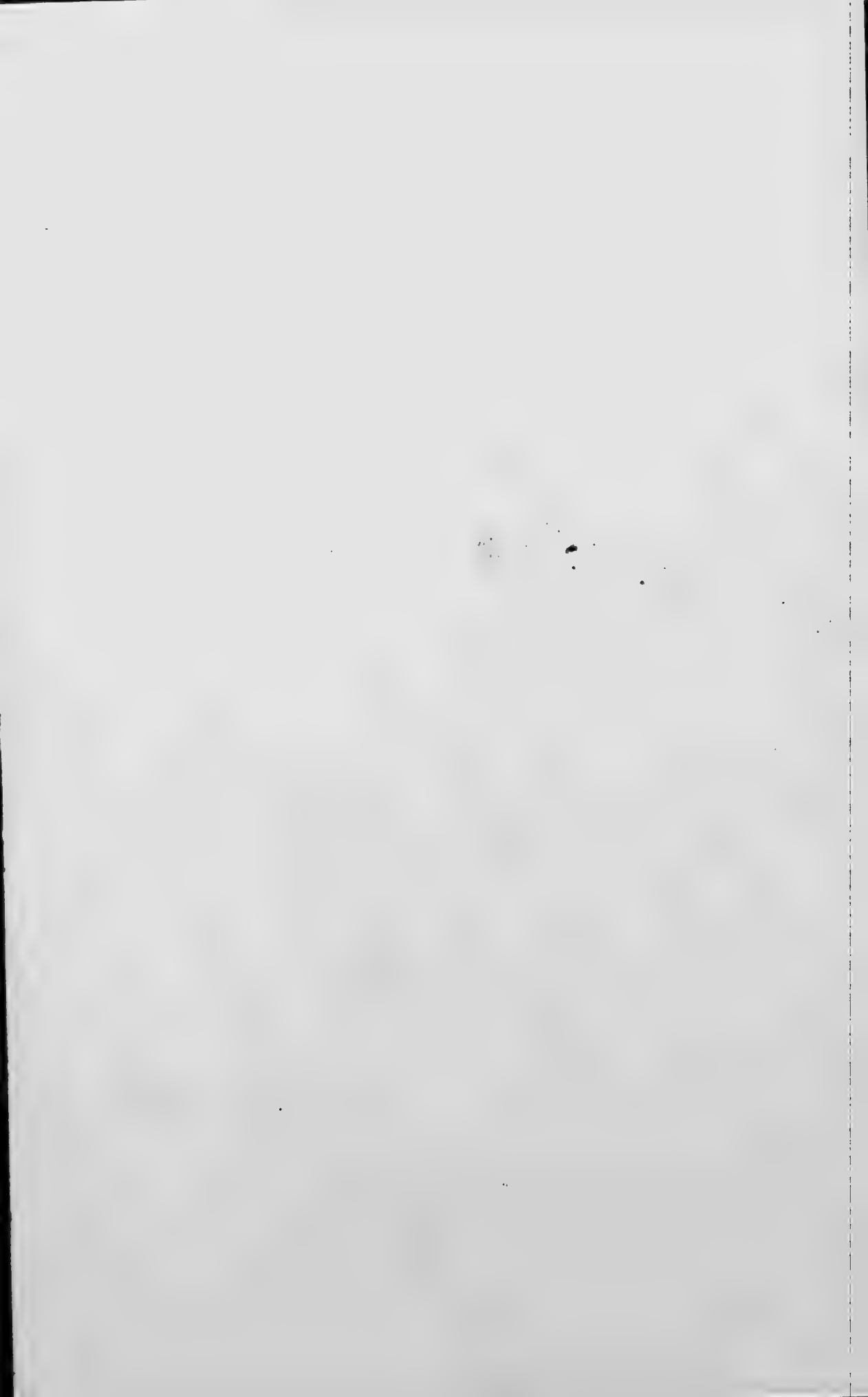
Respectfully submitted,

HERBERT M. ANSELL,

ABE LEVY,

PLATO E. PAPPS,

Attorneys for Petitioners.



BRIEF OF INTERVENOR THOMAS
CADILLAC, INC.

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21,972

INTERNATIONAL ASSOCIATION OF MACHINISTS,
DISTRICT LODGE 94, AFL-CIO; and AUTOMOTIVE
MARINE, PRODUCTION FINISHERS, EQUIPMENT,
MAINTENANCE AND PUBLIC SERVICE PAINTERS
LOCAL UNION 1798, BROTHERHOOD OF PAINTERS,
DECORATORS AND PAPERHANGERS OF AMERICA,
AFL-CIO,

Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent,

THOMAS CADILLAC, INC. and LOU EHLERS CADILLAC,

Intervenors.

ON PETITION TO REVIEW AND SET ASIDE AN ORDER
OF THE NATIONAL LABOR RELATIONS BOARD.

H. BURDETTE FREDRICKS,
3600 Wilshire Blvd.,
Los Angeles, Calif. 90005,

United States Court of Appeals
for the District of Columbia Circuit

HENRY W. LOW,
3460 Wilshire Blvd.,
Los Angeles, Calif. 90005,

EDWARD A. McDERMOTT,
815 Connecticut Ave.,
Washington, D.C. 20006,

*Attorneys for Intervenor
Thomas Cadillac, Inc.*

FILED

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Nathan J. Paulson
CLERK

Of Counsel:
HOGAN & HARTSON.

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Intervenors.

ON PETITION TO REVIEW AND SET ASIDE AN ORDER
OF THE NATIONAL LABOR RELATIONS BOARD.

**BRIEF OF INTERVENOR THOMAS
CADILLAC, INC.**

STATEMENT OF ISSUE.

“Whether the Board properly reversed the Trial Examiner and dismissed the complaint which alleged that the Intervenor, Thomas Cadillac, Inc., as a successor to Cadillac Motor Car Division, Los Angeles Branch, General Motors Corporation, violated Section 8(a)(5) and

(1) of the Act by refusing to bargain with petitioners." (Appx. 1151, 1154).¹

The case has not previously been before this Court.

STATEMENT OF THE CASE.

Nature of the Case.

General Motors Corporation for some years operated two retail Cadillac sales and service outlets, one at Seventh and Bixel Streets, and one on Wilshire Boulevard, in Los Angeles.

In 1964 it entered into a single collective bargaining contract with two different unions, one representing auto-body painters and the other various other classes of employees. Employees at both outlets were covered by the one contract.

In 1965 it sold the assets of the outlets to two different purchasers, and entered into separate contracts with each purchaser pursuant to which each became an independent franchised Cadillac dealer in competition with the other, and with all other Cadillac dealers in the area.

Both of the purchasers refused to bargain with the unions for a variety of reasons.

The National Labor Relations Board held they were not required to do so, because they were not "successors" as that term is used in federal labor jurisprudence.

The correctness of that decision is the subject of this appeal.

¹"Appx." herein refers to "Appendix of the Parties"; "R." refers to "Official Report of Proceedings before the National Labor Relations Board."

Course of Proceedings.

Separate charges against intervenors Thomas and Ehlers were filed by the two unions involved on June 2 and 3, 1965 (Appx. 324-5; 327-9; 331-3; 335-7). Amended charges were filed November 17, 1965 (Appx. 326-7; 329-31; 333-5; 337-9).

An order consolidating the two cases, and a consolidated complaint were filed November 30, 1965, charging Ehlers and Thomas, the intervenors herein, with violations of Sections 8a(1) and 8a(5) of the National Labor Relations Act (Appx. 340-357).

Both intervenors filed answers thereto (Appx. 358-379). The answer of intervenor Thomas was subsequently amended (Appx. 391-2).

The hearing on the merits before the Trial Examiner was held on February 23, 24, 25, and 28, 1966 (R. 1-607).

The decision and recommended order of the Trial Examiner, rendered May 17, 1966, found that the intervenors had committed the violations charged and should be ordered to desist (Appx. 9-54).

The National Labor Relations Board made an order on May 17, 1966, transferring the cases to the Board (Appx. 9). Exceptions to the Trial Examiner's decision and briefs in support thereof were filed by intervenors (Appx. 63-97).

The decision and order of the National Labor Relations Board, rendered May 29, 1968, directed dismissal of the complaint (Appx. 54-62; 170 NLRB No. 92).

Although Intervenors had defended on a number of independent grounds,² the Board did not consider any

²See, *e.g.* Brief of Intervenor Thomas in support of exceptions to the trial examiner's decision (Appx. 63 at pp. 71, *et seq.*).

except the question of "successorship," holding that the intervenors did not become "successors," and therefore were not bound to bargain with the unions or honor the contract.

The charging parties—the two unions—filed in this Court a petition to review and set aside the order of the NLRB (Appx. 1138-44). Intervenor Thomas Cadillac, Inc. filed a motion for leave to intervene (Appx. 1149-50) which was granted by the Court June 25, 1968 (*Cf. International Union v. Scofield*, 382 U.S. 205, 15 L. ed. 2d 272, 86 S. Ct. 373 (1965)).

STATEMENT OF FACTS.

1. The General Motors-Owned Cadillac Dealerships in Los Angeles.

About January 1, 1949, General Motors Corporation, through its Cadillac Motor Car Division, Los Angeles Branch,³ ("General Motors") opened a branch retail sales outlet ("Bixel") for the sale of Cadillac motor vehicles, parts and accessories, and the servicing of such vehicles at 1076 West Seventh Street, at the intersection of Seventh and Bixel Streets, Los Angeles, California (Appx. 214, 207).⁴

About January 1, 1954, it opened another outlet ("Wilshire") at 5151 Wilshire Boulevard, Los Angeles, California (Appx. 215).

Prior to May 28, 1965, it also maintained a used car lot ("Vermont") at 501 South Vermont Avenue in Los Angeles (R. 255; Appx. 221). After that date the lot was no longer used (Appx. 231).

³Cadillac Motor Car Division is not a corporation, but merely a division of General Motors (Appx. 935).

⁴As part of this operation, a used car lot was maintained directly across the street, at 1041 West Seventh Street (Appx. 313).

2. General Motors' Labor Relations in Los Angeles.

Pursuant to a consent-election agreement, a representation election was held, and on August 1, 1957, International Association of Machinists for and on behalf of District Lodge #94, Local #1086, AFL-CIO ("Machinists") was certified for a unit of certain General Motors employees at both Bixel and Wilshire (Appx. 1103-1105).

A collective bargaining agreement was executed between General Motors and the Machinists on October 17, 1957, effective for one year. Auto body painters were included under the agreement (Appx. 1025-1072).

This agreement was negotiated on behalf of General Motors by Joseph G. Pais, then Director of Labor Relations for the Cadillac Motor Car Division of General Motors in Detroit (Appx. 936; 934).

On November 6, 1958, after an NLRB-conducted election, the Automotive, Marine, Production Finishers, Equipment Maintenance and Public Service Painters, Local Union 1798, Brotherhood of Painters, Decorators, and Paperhangers of America, AFL-CIO ("Painters") was certified for a unit of General Motors employees consisting of auto body painters at both Bixel and Wilshire (Appx. 1107-9).

Thereafter General Motors entered into collective bargaining agreements dated December 4, 1958 and dated October 22, 1961, both of which were with both the Machinists and the Painters (Appx. 948-9; 952-3). Mr. Pais was the principal negotiator for General Motors as to both of these contracts (Appx. 948).

On December 1, 1964, General Motors executed a collective bargaining agreement with both unions cover-

ing certain employees⁵ at both branches, which provided that it would remain in full force and effect without change until December 1, 1967, and thereafter until notice to terminate or modify the agreement was given by one party to the other as provided therein (Appx. 577-636).

The agreement did not contain any provision making it binding on successors and assigns of General Motors, or on purchasers of its assets (R. 242).

In anticipation of the contemplated transfer of the dealerships, on April 28, 1965, a supplement to said agreement was executed, permitting hourly employees to "waive their seniority rights and take a layoff out of line of seniority under the seniority provisions of the existing agreement" if their services were no longer needed at the Cadillac Motor Car Division, Los Angeles Branch (Appx. 973-4, 640-1).

3. Transfer of the Two Dealerships.

In early March, 1965, representatives of General Motors Corporation approached La Rue Thomas⁶ and dis-

⁵"Machinists" was recognized as exclusive representative of the following employees: Mechanics, Polishers, Washers, Lubricators, Garage Attendants, Body and Fender men, Machinists, Elevator Operators, Trimmers, and Maintenance men.

"Painters" was recognized as exclusive representative of the following employees: Painters.

Specifically excluded from the category of employees covered by the agreement were the following: Branch Manager, Assistant Branch Manager, Sales Manager, Used Car Manager, Service Manager, Assistant Service Manager, Parts Manager, Assistant Parts Manager, General Foremen, Foremen, Assistant Foremen, Inspectors, Timekeepers, Shop Clerks, Parts Clerks, Service Salesmen, Office Clerical Employees, New & Used Car Salesmen, Tower Operator, Pick-up Drivers-Parts, Pick-up & Delivery men, Guards, Operating Engineers, Supervisors, Clerical Employees, G.M. Tech Students, and Work Dispatchers (Appx. 577-9).

⁶At that time Mr. Thomas was President, a Director and a principal stockholder of Cecil L. Thomas and Sons, Inc., a Cadillac dealership in Harbor City, California (Appx. 235-6, 828-9). This franchise was terminated as of May 31, or June 1, 1965 (Appx. 236).

cussed the acquisition by him of a Cadillac dealership at Bixel (Appx. 238, 841-2). A few days later he accepted (Appx. 843).

A similar course took place regarding Lou Ehlers and a dealership at Wilshire (Appx. 425 *et seq.*).

On May 11, 1965, General Motors and Thomas executed a Buy and Sell Agreement (Appx. 728-50) and a Bill of Sale (Appx. 751-781).

These provided for the discontinuance by General Motors of its Cadillac retail sales and service operations at Bixel; the execution by the parties of a "Cadillac Direct Dealer Selling Agreement" with a term of five years; and the purchase by Thomas of most of the personal property on the premises, including machinery and equipment; new Cadillac vehicles, parts and accessories; tools, supplies, and cars traded in. Unfilled retail orders were assigned to Thomas, who purchased all trade accounts receivable.

Thomas bought General Motors' accounts receivable purely as a courtesy to the latter; it had no interest in handling them (Appx. 240).

Thomas did not, however, purchase any good will, customer lists, trade secrets, contracts with suppliers or furnishers of services, bank accounts, contract reserves, real property, or rebates due at the end of a model year (Appx. 147-50). No patents were bought (Appx. 260). No assets located at the Wilshire store or the Vermont Avenue lot were purchased (Appx. 261). No trade names or trademarks were acquired (Appx. 885). No liabilities of General Motors were assumed (Appx. 885).

It was also provided that Thomas would take a two-year lease of Bixel (Appx. 254-5). The principal building thereon was a loft-type building which had

originally been designed as a furniture manufacturing center; it was a rather poor type of building for an automobile dealership (Appx. 255). Thomas did not anticipate staying there permanently (Appx. 255). Thomas also took a sublease on the premises across the street for use as a used car lot (Appx. 255).

The May 11 agreement was contingent upon the issuance of a Cadillac franchise agreement being entered into with Thomas (Appx. 866).

On May 12, 1965, General Motors and Ehlers executed a similar agreement pertaining to a Cadillac dealership at Wilshire (Appx. 519-537). A bill of sale and assignment from General Motors to Lou Ehlers Cadillac were executed as of June 1, 1964 (Appx. 537-553).

On June 1, 1965, Thomas entered into a written franchise agreement with the Cadillac Motor Car Division of General Motors Corporation which was the typical franchise agreement issued to independent Cadillac dealers throughout the United States (Appx. 140-1, 224, 649-706).

The same day, Thomas, at Bixel, and Ehlers, at Wilshire, both commenced sales operations as competing independent franchised Cadillac dealers (Appx. 868, 161).

On June 7, 1965, Thomas executed an assignment of his rights under his contract with General Motors to the intervenor Thomas Cadillac, Inc., a California corporation (Appx. 790-1; 239).⁷

Effective as of June 1, 1965, General Motors assigned to Thomas Cadillac, Inc., certain assets and rights (Appx. 792-800).

⁷Ehlers made a similar assignment to the intervenor Lou Ehlers Cadillac, a California corporation, June 1, 1956 (Appx. 571).

On June 7, 1965, Thomas commenced service operations (Appx. 868).

4. Labor Relations Aspects of the Transfer to Thomas.

On January 12, 1965, General Motors notified both unions that it was reconsidering its policy of operating its own Cadillac agencies, and contemplating the transfer of its Bixel and Wilshire branches to independent dealers (Appx. 959-60).

Mr. Pais of General Motors in Detroit later wrote letters on the subject to the unions on January 21 and March 26, and May 10, 1965 (Appx. 1077-1080).

During the negotiations with Thomas in March, 1965, General Motors told Thomas of the existence of the collective bargaining agreement, but stated that there were no successor rights in the agreement and that if Thomas acquired the dealership, he would not be bound by it (Appx. 240).

Prior to execution of the agreement with General Motors, Thomas' counsel advised him that the collective bargaining agreement with General Motors would not be binding upon him as purchaser (Appx. 202-3).

On May 10, 1965, General Motors wrote the unions that on June 1, 1965, La Rue Thomas would take over the Bixel branch and Lou Ehlers the Wilshire branch (Appx. 1081).

Under the May 11, 1968 agreement with General Motors, Thomas did not assume any of General Motors' liability under its collective bargaining agreement with the Teamsters and Painters Union (Appx. 239-40). Nor did it acquire any interest in any pension plan for employees, guaranteed income plan, group insurance plan, or any other benefits which General Motors had with respect to its employees in Los Angeles (Appx.

148-50). Nor were any personnel files, seniority lists, official minutes of negotiations with unions or correspondence re negotiating meetings acquired (Appx. 260, 871).

On one occasion, Mr. Hopkins of General Motors told Thomas that General Motors was going to terminate all its employees at Bixel, and was going to place as many of them as it could (Appx. 870).

On May 17 and 18, 1965, the unions wrote Thomas requesting him to meet with their representatives (Appx. 719-23). On June 8 and 9, 1965, the unions wrote him requesting that he submit to arbitration the question of whether he was bound under the terms of any labor agreement with the Machinists and Painters Unions (Appx. 723-5). He did not respond to the requests, having been advised by his labor consultant that he had no duty to do so (R. 87; Appx. 262).

On May 28, 1965, General Motors terminated all its employees at both branches (Appx. 143).

Thomas did not request General Motors to do so (Appx. 995).

General Motors did not request Thomas to terminate its employees, or to notify them that they would no longer be employees of General Motors, or to participate in any manner or carry out any benefits provided by General Motors to their employees relative to pensions or vacation or pay (Appx. 257). Nor did it ask Thomas to assume its collective bargaining agreement (Appx. 261).

The supervisory and hourly-rate employees of General Motors at Bixel as of May 31, 1965, are listed on exhibits (Appx. 714-15; 717-9).

About May 27, 1965, Lloyd E. Coats, general service manager for Thomas, commenced interviewing machin-

ists, painters, service writers, car jockeys, and garage attendants as prospective employees of Thomas (Appx. 281, 278). These interviews continued until about June 7 (Appx. 281).

Coats, himself, had been service manager for Thomas at Cecil L. Thomas & Sons, Inc., in Harbor City, California for five years; he had been in charge of all employees there. Thomas brought him over to take complete charge of all service operations (Appx. 800).

General Motors employees and other personnel were interviewed at the same time (R. 392). The General Motors employees at Bixel had been handed applications which they filled out and returned to Coats (Appx. 281).

In addition to former General Motors employees a number of the employees hired came with Thomas from his dealership in Harbor City (Appx. 269); others were hired at the recommendation of Bill Hinman, a Pontiac service manager in Compton who became Coats' assistant (Appx. 279, 802). Others came from employment agencies, trade schools, and by word-of-mouth (Appx. 279, 802).

Employees were hired solely on the basis of ability (Appx. 267).

In deciding whom to hire, Coats considered experience, mental outlook, age, honesty, loyalty, sobriety and good mechanical background (Appx. 278, 287-8, 819). Unionism was not a factor considered (Appx. 279, 801). Nor was it mentioned by any of the applicants who had been General Motors employees (Appx. 278).

Prior to May 28, 1965, General Motors employed 75 persons at Bixel covered by the collective bargaining agreement (Appx. 717-9).

Thomas hired 63 employees in such categories (Appx. 878); 16 of these had been General Motors employees (Appx. 259, 878).

As to supervisory employees, the executives, department heads, and foremen of Thomas as of June 30, 1965, are listed in Thomas' Exhibit 1, and are 21 in number (Appx. 1114). 7 of these had worked for General Motors—5 in the same capacity as they worked for Thomas; also, a used car salesman for General Motors became Thomas' assistant used car manager, and General Motors' Los Angeles supervisor of accounting became Thomas' business manager (Appx. 243-5).

15 to 17 out of 25 to 30 new and used car salesmen employed by Thomas had worked for General Motors (Appx. 878). These, of course, were not covered by the collective bargaining agreement.

General Motors as an employer had a favorable experience rating under the California Unemployment Insurance Law; California allows a lower rate to employers with favorable experience, and General Motors qualified for the lower rates (Appx. 175). After the transfer, Thomas was required to pay the maximum rate (Appx. 176, 263). Workmen's compensation costs and benefits were determined without regard to the experience of General Motors (Appx. 177, 263).

All employees of Thomas, including those who had worked for General Motors, were required by Thomas to execute new federal income tax exemption withholding forms (Appx. 317-8).

Thomas got a new federal Society Security tax employer's account number; also a new number for California unemployment insurance (Appx. 318).

ARGUMENT.

I.

THOMAS IS NOT A "SUCCESSOR" TO GENERAL MOTORS.

A. Definition of a "Successor" in Federal Labor Law.

This case involves the question of the special meaning of the words "successor" and "successorship" in federal labor jurisprudence.

In a famed passage, Justice Holmes said:

"A word is not a crystal, transparent and unchanged; it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used." (*Towne v. Eisner*, 245 U.S. 418, 425, 62 L. ed. 372, 38 S. Ct. 158 (1918)).

In *Walker Bros.*, 41 Lab Arb 844, 848-9 (1963), it was said:

"... the courts and the National Labor Relations Board have developed and applied a successorship doctrine based on the employment relationship—a concept which, of course, is unique to labor law."

Cf. International Association of Machinists v. Pivot Punch Corporation, 34 Misc. 2d 645, 229 N.Y.S. 2d 476, 481 (1962).

"... it is true that the New York courts have not dealt extensively with the question of successorship... as it relates to labor agreements. In contrast, the Federal courts and the National Labor Relations Board have considered the question frequently and have developed a body of law concerning it."

In the interim report in *Diamond National Corporation*, (1961) 133 NLRB 268, 275, it was stated:

“... the words ‘successor’ or ‘successorship’ are used in relation to several types of problems and are used in a different sense in each connection.
...”

1. Transfers Not Involving the Issue of “Successorship.”

Let us first narrow down the issue by excluding the large number of cases where labor obligations have been imposed on the transferee of a business on some ground *other* than the special doctrine of “successorship.” Included in this category are:

(a) Transfers wholly technical in nature: *NLRB v. Coal Creek Coal Company*, (10 Cir) 204 F. 2d 579 (1953) (transfer to receiver); *NLRB v. Baldwin Locomotive Works*, (2 Cir) 128 F. 2d 39, 43 (1942) (transfer from receiver); *NLRB v. William Tehel Bottling Co.*, (8 Cir) 129 F. 2d 250, 255 (1942) (termination of partnership because of death of partner); *NLRB v. Colten*, (6 Cir) 105 F. 2d 179, 183 (1939) (termination of partnership because of death of partner).

(b) Transfers to alter egos, and to organizations controlled by or closely identified with the transferor. Often the transfers were made for the purpose of evading the contractual and/or statutory labor obligations of the transferor. See, for example: *NLRB v. Herman Bros. Pet Supply Inc.*, (6 Cir) 325 F. 2d 68 (1963); *Reynolds Pallet & Box Co. v. NLRB*, (6 Cir) 324 F. 2d 833 (1963); *NLRB v. U.S. Air Conditioning Corp.*, (1 Cir) 302 F. 2d 280 (1962); *NLRB v. Ozark Hardwood Co.*, (8 Cir) 282 F. 2d 1 (1960).

(c) Transfers where the transferee was involved in the unfair labor practices of the transferor prior to the transfer: *NLRB v. Parran*, (4 Cir) 237 F. 2d 373 (1956); *NLRB v. New Madrid Manufacturing Company*, (8 Cir) 215 F. 2d 908 (1954).

The taxonomy here employed is not, of course, an exclusive one.⁸

2. Other Transfers: Criteria Distinguishing "Successors"
From "Non-Successors."

The remaining cases, which may broadly be described as bona fide transfers, remain to be broken down into "successor" and "non-successor" categories.

(a) Purposes for Which the Distinction Is Made.

It should be noted that the question of whether a transferee does or does not become a "successor" is raised in several different contexts:

(1) Whether the transferee is bound to recognize the certification of the union, and to negotiate with it: *e.g.*, *NLRB v. Aluminum Tubular Corp.*, (2 Cir) 299 F. 2d 595 (1962); *Piasecki Aircraft Corp. v. NLRB*, (3 Cir) 280 F. 2d 575 (1960) cert. den. 364 U.S. 933).

(2) Whether the transferee is bound by the arbitration clause, or other portion of the transferor's collective bargaining contract: *e.g.*, *Owens-Illinois, Inc. v. Retail Store Union*, (SD NY) 276 F. Supp. 740 (1967); *Wiley & Sons v. Livingston*, 376 U.S. 543, 11 L. ed. 2d 898, 84 S. Ct. 909 (1964).

(3) Whether the transferee is bound to remedy the unfair labor practices of the transferor: *e.g.*, *United States Pipe & Foundry Co. v. NLRB*, (5 Cir) F. 2d, 68 LRRM 2913 (1968); *NLRB v. Fred B. Weissman Co.*, (6 Cir) 170 F. 2d 952, 954 (1948) (cert. den. 336 U.S. 972).

⁸Cf. The supplemental intermediate report in *The Alexander Milburn Company*, 78 NLRB 747, 765 (1946) suggesting as a classification of cases involving the "successors and assigns" provision in NLRB orders the following: (1) the bad faith successor and assign; (2) the alter ego; (3) the bona fide successor and assign; and (4) the successor or assign who acquires an operating business with notice of the unfair labor practices of the predecessor.

The inquiry in this case, of course, lies in the first category: whether the transferee is bound by the certification of the union and obligated to negotiate with it.

(b) General Definition of When a "Successorship"
Is or Is Not Present.

Before proceeding to a discussion of the specific criteria distinguishing "successorship", from non-successorship, let us examine a few general statements as to the distinction.

In *Forkosch: A Treatise on Labor Law* (2nd ed., 1965) 623 it is stated:

"In general, it may be said that this successor duty to bargain seems to depend upon *whether the appropriate unit, and the business operation, retain their former respective characters* under the new ownership." (emphasis added)

In *NLRB v. Auto Ventshade, Inc.*, (5 Cir) 276 F. 2d 303, 304, (1960) the court said:

"The crucial question in determining if the certification is binding on the successor is *whether the employing industry remains essentially the same* after the transfer of ownership." (emphasis added).

In *NLRB v. Aluminum Tubular Corp.*, (2 Cir) 299 F. 2d 595, 598 (1962), the Court said:

"Where, however, the nature or extent of the employing enterprise, or the work of the employees, is substantially changed, the transfer of *a part* or even all, of the physical assets, does not carry along with it the duty of the former owner to continue bargaining with the former exclusive representative . . . The purchaser in such a situation is not a successor employer. The controlling fact in each case is therefore *whether the employment enter-*

*prise substantially or essentially continues under the new ownership as before.’*⁹ (emphasis added).

Indeed, some of the quotations given by petitioners are to the same effect:

NLRB v. Tempest Shirt Manufacturing Company, (5 Cir) 285 F. 2d 1, 4 (1960) (Pet. Br. 37):

“... the crucial question for determining successorship is one of continuity: *whether the industry remains essentially the same after the transfer of ownership.*” (emphasis added).

Overnite Transportation Co. v. NLRB, (4 Cir) 372 F. 2d 765, 768 (1967) (Pet. Br. 38):

“It can now be considered as settled that if the transfer of assets and employees from one employer to another *leaves intact the identity of the employing enterprise*, then the former’s duty to recognize and bargain with an incumbent union devolves upon the latter as successor employer.” (emphasis added).

(c) Specific Criteria Distinguishing “Successors”
From “Non-Successors”.

The criteria for determination of when a bona fide purchaser of a business is or is not a “successor” have been summarized by a number of authorities.

In *Reagan: The contractual obligations of a successor employer under the collective bargaining agreement of a predecessor*, 113 Univ. of Penn. Law Rev. 914, 922 (1965) it was said:

“The Board in applying the continuity standard seems to have required that five elements remain constant in order for the employment relationship not to have changed: location of the business and

⁹Quoted by the court from *Cruse Motors, Inc.*, 105 NLRB 242, 247 (1953).

similarities of personnel, supervision, equipment, and mode of operations.”

In *Sangerman: The labor obligations of the successor to a unionized business*, 19 Labor Law Journal 160, 163 (1968), the author states:

“Successorship is primarily a factual question. The following are a number of factors which may be determinative of successor status: (1) whether a going business, or merely assets are transferred; (2) whether there is a continuity of ownership interest between the transferor and transferee; (3) whether the nature of the business remains the same; (4) the number of employees assumed by the acquiring company; (5) whether the business remains at the same location; (6) whether there is evidence of an intent to avoid dealing with the union; (7) the point of time of the transfer in relation to the certification of the union; and (8) the retention of supervisory personnel.”¹⁰

In *Moss: Purchase of a Business*, 43 Calif. State Bar Journal 387, 389 (1968) it is stated:

“The test to determine successorship is whether the ‘employing industry’ remains substantially the same. . . .

“Whether the purchaser is the statutory successor to the seller is a factual question. The courts and the Board will examine various factors in order to determine whether there is substantial continuity. Among the criteria weighed are continuity in: (1) nature of the business; (2) plant location; (3) machinery, equipment, and modes of opera-

¹⁰The criteria here stated are largely a restatement of the criteria set forth in *Maddux; Labor Law Implications in the Sale, Transfer or Discontinuance of All or Part of a Business Operation*, 18 Business Law Rev. 819, 835-6 (1963), cited by Sangerman.

tion; (4) supervisory, nonsupervisory personnel, management of ownership; and (5) employee duties and working conditions. . . . (6) . . . the good faith of the transfer.”

A number of judicial decisions have applied these criteria—in some cases a “successor” has been found to be present; in others it has been held that the purchaser was not a “successor.”

Federal cases decided in the last ten years in which the purchaser was held not to be a “successor” include:

NLRB v. Alamo White Truck Service, Inc., (5 Cir) 273 F. 2d 238 (1959);

Piasecki Aircraft Corp. v. NLRB, (3 Cir) 280 F. 2d 575 (1960) (cert. den. 364 U.S. 933);

NLRB v. Aluminum Tubular Corp., (2 Cir) 299 F. 2d 595 (1962);

NLRB v. John Stepp's Friendly Ford, Inc., (9 Cir) 338 F. 2d 833 (1964);

Owens-Illinois, Inc. v. Retail Store Union, (SD NY) 276 F. Supp. 740 (1967);

Cf. International Association of Machinists v. Shaumee Industries Inc., (WD Okla) 224 F. Supp. 347 (1963).

State cases to the same effect include:

International Association of Machinists v. Pivot Punch Corp., 34 Misc. 2d 645, 229 N.Y.S. 2d 476 (1962);

Drivers, Warehouse & Dairy Employees Union Local No. 75 v. Wisconsin Employment Relations Board, 29 Wisc. 2d 272, 138 N.W. 2d 180 (1965) (cert. den. 384 U.S. 906).

Indeed a California state trial court held in companion cases, that the intervenors were not "successors" to General Motors in the present situation, in actions brought against them by petitioners: *Cooksey, et al. v. Lou Ehlers Cadillac, etc.* Los Angeles Superior Court No. 863 284 (June 30, 1966) (the court's findings of fact, conclusions of law, and order are set forth in Appx. 121-129); *Cooksey, et al. v. Thomas Cadillac, Inc. etc.*, Los Angeles Superior Court No. 863 286 (referred to by petitioners at Appx. 131).

(d) *Wiley v. Livingston* and Cases Relying Upon It.

Petitioners have quoted from *Wiley v. Livingston*, 376 U.S. 543, 11 L. ed. 2d 898, 84 S. Ct. 909 (1964). (Pet. Br. 35-6), and two decisions of the Court of Appeal relying upon it—*Wackenhut Corp. v. International Union*, (9 Cir) 332 F. 2d 954 (1964) and *United Steelworkers of America v. Reliance Universal, Inc.*, (3 Cir) 335 F. 2d 891 (1964) (Pet. Br. 36-7).

In reviewing these cases, it is important to distinguish between two wholly different questions:

(1) Under what circumstances does the transferee of a business become a "successor" or "successor employer" within the meaning of the federal labor laws?

(2) Where a transferee is found to have become such a "successor" or "successor employer," what are the legal consequences flowing therefrom?

It is the *second* question which has caused the *Wiley* case to become such a celebrated one in labor law, the court holding that where a transferee did become a "successor employer" it was bound under the arbitration clause of the transferor's collective bargaining agreement to arbitrate with the union regarding what rights

of the employees set forth in the contract survived the transfer and the expiration of the contract.¹¹

It is the *first* question only which is relevant here.

On the question of what are the criteria as to when a transferee becomes a "successor employer", the Supreme Court in *Wiley* did not alter or add to the antecedent law.

The case involved the merger of a publishing firm in its entirety into a larger publishing firm. In holding that the transferee there was a successor, the court said:

"We do not hold that in every case in which the ownership or corporate structure of an enterprise is changed the duty to arbitrate survives. As indicated above, there may be cases in which the *lack of any substantial continuity of identity in the business enterprise before and after a change* would make a duty to arbitrate something imposed from without, not reasonably to be found in the particular bargaining agreement and the acts of the parties involved. . . . Although Wiley was substantially larger than Interscience, relevant similarity and continuity of operation across the change in ownership is adequately evidenced by the *whole-sale transfer of Interscience employees to the Wiley*

¹¹The holding was grounded on the strong federal policy in favor of arbitration previously expressed by the court in the "Steelworkers Trilogy." (*Steelworkers Union v. American Mfg. Co.*, 363 U.S. 564 (1960); *Steelworkers Union v. Warrior and Gulf Nav. Co.*, 363 U.S. 574 (1960); *Steelworkers Union v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960) and subsequent cases. These cases appear to be expressions of the duty of federal courts to fashion a "federal common law" in actions brought under section 301 of the Labor Relations Management Act of 1947, which gave Federal district courts jurisdiction over suits for violation of collective bargaining contracts in industries affecting interstate commerce. *Textile Workers v. Lincoln Mills*, 353 U.S. 448 (1957).

plant, apparently without difficulty. . . . In addition, we do not suggest any view on the questions surrounding a certified union's claim to continued representative status following a change in ownership. (citations)" (emphasis added). (376 U.S. at p. 551).

The distinction between the two questions was clearly recognized by the attorney for the General Counsel (then in opposition to intervenors) in the proceedings before the Trial Examiner:

"Mr. Pappy: . . . We are not contending that Wiley aids in the successorship issue, but that Wiley depends on the successorship, of finding successorship . . .

"Trial Examiner: You don't think Wiley would be applicable unless the Trial Examiner makes a finding of successorship?

"Mr. Pappy: That is the present position of General Counsel." (R. 578-9).

See also, *Feller, Status of the Collective Bargaining Agreement Under Wiley: A Union Counsel's View*, in New York University, Eighteenth Annual Conference on Labor 287 (1965):

"In determining whether any 'essential attribute of the employment relationship has been changed as a result of the transfer', the Board has looked at all the facts and circumstances to determine whether the same business is being operated in basically the same way. *This appears to be essentially the test which the Supreme Court applied in Wiley.*" (emphasis added).

Wackenhut Corp. v. International Union, (9 Cir) 332 F. 2d 954 (1964) and *United Steelworkers of America v. Reliance Universal, Inc.*, (3 Cir) 335 F. 2d 891

(1964) also both involved enforcement of arbitration clauses.¹²

In both cases the business after the transfer was virtually identical with that prior to the transfer:

In *Wackenhut* the seller partnership (General Plant Protection Company) was in the business of furnishing guard services for certain oil and chemical plants. The buyer (Wackenhut Corp.) purchased substantially all of the seller's assets, including lease-holds, contracts with customers, all customer lists, all assignable permits and licenses, trade names and trademarks, company's records re same, the name "General Plant Protection Company," and the seller's covenant not to compete with the buyer. Wackenhut assumed substantially all the monetary liabilities of General Plant. The buyer rendered identical services using the same office facilities and equipment and the General Plant name. The supervisor and assistant supervisor for General Plant rendered the same services for Wackenhut. A partner of General Plant became a director, stockholder and consultant of Wackenhut. The latter's letterhead read "General Plant Protection Company, a Division of Wackenhut." Most of the 65 employees of General Plant began working for Wackenhut using General Plant uniforms and insignia.

In *Reliance*, a concrete pipe plant was sold intact, pursuant to an anti-trust decree.

In *Reagan: The Contractual Obligations of a Successor Employer under the Collective Bargaining Agreement of a Predecessor*, 113 Univ. of Penn Law

¹²The cases have been extensively discussed in literature on the subject because of their dicta that where the transferee is a "successor employer" the entire collective bargaining agreement of the transferor becomes binding upon it.

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Rev. 914, 922, (1965), the author, referring to the *Wackenhut* and *Reliance* decisions, said:

“In two courts of appeal decisions after *Wiley*, it appeared that virtually everything at the predecessor’s plant continued as before—only the name of the employer changed.”

See, also *United States Pipe & Foundry Company v. NLRB*, (5 Cir) F. 2d, 68 LRRM 2913, (1968) holding that a purchaser who bought with notice of a pending unfair labor practices proceeding, who continued to operate the plant in the same manner and with the same jobs was, upon an adverse determination of the proceeding, required to offer reinstatement to the employees in question.

B. Application of the Criteria to the Present Case Establishes That Thomas Is Not a “Successor” to General Motors.

Applying the foregoing criteria to the present case, establishes, we believe, that the decision of the NLRB was supported by overwhelming evidence.

1. Change in Nature of the Business.

The changes in the nature of the business resulting from the transfer to Thomas are qualitative, quantitative and profound.

a. Change From a Business Basically Run From a National Headquarters in Detroit, to a Purely Local Business.

General Motors Corporation (including its Cadillac Motor Car Division) has its headquarters in Detroit, Michigan (R. 148). Its operations are international in scope, and it is represented in nearly every major metropolitan area in the United States (R. 148). It is the world’s largest corporation, with about 650,000 employees (Appx. 936).

Prior to the transfer, many of the aspects of management of Bixel were under the government of the head office of General Motors and its Cadillac Motor Car Division in Detroit. The general manager at Bixel received his orders from there (Appx. 209).

Thus, all major expenditures and capital improvements had to be approved there (Appx. 218). All insurance was placed by the central office in Detroit (Appx. 217). That office was in charge of the employment of attorneys (Appx. 218).

Likewise, all new car advertising was handled from Detroit; the local advertisements did not even specify whether the vehicles advertised were at Bixel or Wilshire (Appx. 219).

The top management employees in Bixel were paid directly by the Detroit headquarters (Appx. 213).

Both stores operated under the name of Cadillac Motor Car Division of The General Motors Corporation (Appx. 215).

Indeed the matter is well summarized in the concurring opinion of Member Jenkins of the NLRB in this case (in which Member Fanning also joined):

“Furthermore, while it is true that the Respondents sell and service the same products as GM, their overall operations bear little resemblance to that of their predecessor. . . . GM’s Los Angeles sales outlets, unlike those of Respondents, were intimately tied in with its entire nationwide manufacturing and sales operations. Thus, the controller, the purchasing agent, the personnel manager, the supervisor of accounting, used car manager, and credit manager while located at the Bixel location were carried on GM’s Detroit payroll, and were subject to Detroit’s overall direction and supervision.” (Appx. 61-2).

After the transfer, the business was a purely local one: La Rue C. Thomas and his brother Kenneth R. Thomas were the sole officers (Appx. 234). The Thomas brothers and the company's attorney, H. Burdette Fredricks, were the sole directors (Appx. 840). The Thomas brothers were the stockholders (Appx. 234). General Motors acquired no stock in Thomas (Appx. 224). Thomas acquired no stock in General Motors (Appx. 885).

La Rue Thomas had been an automobile dealer in Southern California since at least 1943, first with his father Cecil L. Thomas, and later with his brother Kenneth (Appx. 235-6).

Thomas had no duties, liabilities or privileges different from those of any other Cadillac dealer franchised by General Motors (R. 365).

Directly in point here is *NLRB v. Alamo White Truck Service, Inc.*, (5 Cir) 273 F. 2d 238 (1959). There the court, in holding that the purchaser was not a "successor employer" and therefore not obligated "to honor NLRB certification of unions certified as the bargaining representatives of the predecessor employers" said:

"The White Motor Company is a well-known, large, and successful manufacturer of trucks. Its head office is in Cleveland, Ohio. For several years White maintained a retail branch in San Antonio, Texas. In December, 1956, the company decided to close its San Antonio branch, after having considered closing it as far back as October, 1956. The decision was admittedly for business reasons and had nothing to do with any union activity. On June 28, 1957, White closed the branch and announced this fact in advertisements in the San Antonio newspapers. . . .

“When it had become apparent that White intended closing the San Antonio branch, Lloyd Cregor, the branch manager, and Willard Boone, the principal salesman, decided to set up an independent business to service and sell trucks, particularly White trucks. They raised \$50,000, using their savings and borrowing on their life insurance, and on June 19, 1957, Alamo was incorporated with Cregor as president and general manager and with Boone as vice-president and treasurer. White, of course, had been looking for a local dealer and shortly before July 1 entered into the usual local retail dealership agreement with Alamo.

“Alamo bought from White the initial inventory of parts, tools, shop equipment, and office equipment. There was however a complete severance with White. . . .

“As the trial examiner pointed out, ‘not only the business but the functions changed.’ The branch was controlled entirely from Cleveland, Ohio. All policies were determined at the home office of the White Motor Company in Cleveland and centered around the fact that the company was engaged in manufacturing trucks and selling trucks on a nation-wide scale. The policies were transmitted to the branch manager through a White vice-president and the regional director. On the other hand, with Alamo, control of policy is vested in the officers and directors of a small, independent business. . . .

“The difference in the nature of the business and in the functions is of material importance in determining the employee-employer relationship. During the time the branch in San Antonio was in operation all White’s labor policies were determined in Cleveland; local White employees re-

ceived their instructions and were 'placed under' R.C. Crotty, a labor relations director with his head office in Cleveland. Thus, at the time of the hearing in the representation case, Mr. Crotty was in San Antonio and instructed Cregor, the branch manager, exactly what to do. The branch manager had no discretion or independence in the matter; he carried out instructions he received from the labor relations director in Cleveland. The same thing was true with reference to sales policies, purchase policies, and all other important matters. Although no large company fails to consider local conditions, there is a substantial difference, in general and in this case, between the policies and operations of a large, nationwide organization and those of a small local business." (pp. 240-2)

In *International Association of Machinists v. Shawnee Industries, Inc.*, (WD Okla) 224 F. Supp. 347 (1963), a suit by a union under section 301 of the Labor Management Relations Act of 1947 for a declaration of rights under a collective bargaining agreement, and for damages for breach of contract (consisting of failure to bargain) which contract expressly provided that it was binding on successors and assigns, the court held that the purchaser of the business was not a successor or assign within the meaning of the contract. One of the reasons for the court's decision was that:

"At the time of the sale, Jonco was a wholly owned subsidiary of Fairchild Engine and Aircraft Corporation whereas Shawnee Industries was an Oklahoma corporation with its stock owned locally." (224 F. Supp. at p. 351).

The present situation is similar in some respects to that involved in the administrative ruling of the Gen-

eral Counsel of the NLRB, reported as *Case No. SR-2368* (1962) in 52 LRRM 1150:

"A grocery store with unorganized employees purchased a second store from a national chain whose employees were covered by a contract with the union. The grocery store did not assume the contract and staffed the new operation with relatives of managerial personnel and transferees from the old store. The new store reopened under the company's own trade name with merchandise which included all the stock of the chain except that which bore the latter's trade mark or label. Subsequent to the reopening, the store refused to negotiate with the union and instead filed an election petition. . . .

"General Counsel refuses to issue complaint upon union's charge that company discriminated against employees respecting their tenure of employment and refused to bargain. . . . Since there was no continuity of interest respecting trade name, good will, or employee relationships between company and national chain, company did not become successor in interest to prior owner. . . ."

b. Change From a Branch of One Business to Two Independent and Competing Businesses.

Prior to the transfer, Bixel and Wilshire operated under the common name of Cadillac Motor Car Division of General Motors (Appx. 215).

Bixel dominated the local operations of Wilshire; indeed the latter was classified as a sub-branch of the former (Appx. 299). The two together were considered by Cadillac to be its Los Angeles branch (Appx. 940).

A single general manager, whose office was at Bixel, was in charge of both stores (Appx. 208-9). He was also in charge of two San Francisco stores (R. 330).

Thus, the central accounting office for both stores were kept at Bixel (Appx. 207). The general ledgers for both stores, and the financial statements for each store, as well as a consolidated statement for both stores, were prepared at Bixel (Appx. 208). There was a controller there for both stores (Appx. 210-11). Accounts receivable and payable for both stores were maintained there (Appx. 210). A purchasing agent there did all the subletting of repair work for both stores (Appx. 211). A credit manager there passed on all credit applications made at both stores (Appx. 210). All checks for the payment of vendors were prepared there (Appx. 226-7).

The payroll department for both stores was at Bixel (Appx. 213). There was none at Wilshire (Appx. 299). The payroll checks for all employees at the three locations was prepared and handed out from there (except for the top management employees who were paid directly from Detroit (Appx. 226, 213)). It likewise administered vacations and leaves of absence for both stores (Appx. 213). Also employees' medical and life insurance (Appx. 216). The personnel files for all three locations were kept there (Appx. 226). The stock savings plan for salaried employees at both stores was administered there (Appx. 227).

Management meetings, and major new and used car sales meetings were held at Bixel (Appx. 215).

The used car manager at Bixel oversaw used car operations at Bixel, Wilshire and Vermont (Appx. 216). 90% of the reconditioning of used cars for all three locations was done at Bixel (Appx. 221, 297).

A building engineer and assistant at Bixel handled all maintenance work for both stores (Appx. 212).

Parts and accessories were exchanged between the two stores (Appx. 214, 299).

Used cars, reconditioned at Bixel, were distributed to all three locations (Appx. 297, 225-6).

New car salesmen from Bixel would frequently take customers to Wilshire to see cars with particular equipment (and vice versa) (Appx. 298). Used cars were shifted between the two locations (Appx. 226, 298).

Cars in for servicing would often be shifted between Bixel and Wilshire, depending on the respective workloads at the two stores (Appx. 298-9, 309).

Used car salesmen at any of the three locations—Bixel, Wilshire and Vermont—might take a customer to see a car at any of the three locations; and this was a frequent occurrence (Appx. 220-1). Any used car at any of the three locations could be sold by salesmen from any of the other locations (Appx. 221).

At times employees were interchanged between the stores (Appx. 211). Bixel would sometimes furnish replacements for employees at Wilshire who were on vacation or ill (Appx. 299). Erving Graham, whose deposition was taken by counsel for the petitioners and introduced in evidence by the General Counsel, had himself been transferred in 1959 from Bixel to Wilshire (Appx. 394).

General Motors had possessed a dealer's license from the Department of Motor Vehicles; an Insurance Certificate under the California Financial Responsibility Law; a business license from the City of Los Angeles; a State Board of Equalization sales tax number; an industrial waste permit from the City of Los Angeles; a license to operate a repair shop; a contractual relationship requiring the making of a deposit with the Department of Water and Power of the City of Los Angeles; a deposit with the local gas utility (R. 300; 250; Appx. 174-5, 262-3).

Each of the aforementioned permits, licenses, and contractual relationships applied to *both* the Bixel and Wilshire stores (R. 250; Appx. 214-5).

None of these were transferred to Thomas or Ehlers, but after the transfers *each* was required to obtain a *separate* new license, etc. covering only operations at its respective address (Appx. 262-3, 174-5; R. 250).

After the transfers, Thomas and Ehlers had no relationship of any kind other than as competitors (R. 201, 200). They were both completely independent establishments (R. 437). There was no interchange of business or employees (R. 437). They had no common ownership, directors, or officers (R. 150, 311). Thomas had no interest in Ehlers' used car business (R. 312).

All accounting, credit, processing of accounts receivable and payable for Thomas was done at Thomas' store; none for Ehlers was done there, and Ehlers did none for Thomas (R. 312).

In *International Association of Machinists v. Pivot Punch Corp.*, 34 Misc. 2d 645, 229 N.Y.S. 2d 476, (1962) a corporation which was party to a collective bargaining agreement was owned by two stockholders, King and Kopczynski. Because of a long-standing dispute between them, an action to dissolve the corporation was brought. It had employed about 60 men. The action had nothing to do with the union.

In settlement of the litigation it was agreed that King and Kopczynski would form separate corporations, to which the assets of the former corporation would be transferred.

The King corporation received the punch raw materials, stock punch inventory, and all punch machinery and equipment; the Kopczynski corporation received the general tool and dye raw materials and machinery.

The King corporation hired 8 employees of the predecessor corporation at the outset. At the end of a year it had 14 employees, 9 of whom had worked for the predecessor employer.

In holding that the King corporation was not a "successor", the court said:

"Since the King Corporation is engaged in interstate commerce, it is subject to the National Labor Relations Act and we therefore consider the decisions of both the Federal courts and the National Labor Relations Board. . . . In resolving the issue of 'successorship', the NLRB considers the interest of all the parties and the circumstances surrounding each case. . . . It evaluates whether there was a change of ownership, whether the new company assumed the existing agreement, the reasons for the sale, the products and size of the successor company, the size of the work force, and other pertinent facts.

"Applying these criteria, we find that the King Corporation is not in fact the alter ego or the successor of the Dissolved Corporation. We believe that the very purpose of the dissolution and settlement executed between Messrs. King and Kopczynski was to conclude the obligations and affairs of the old company and to salvage for each stockholder some of the functions of the Dissolved Corporation. While the work of the King Corporation is similar to that of a division of the Dissolved Corporation, its employment force, both in number and in union membership, is not the same or nearly the same as the Dissolved Corporation. The plant location is different, the gross sales vary, and the personnel is substantially reduced. We believe that a collective bargaining agreement envisioning the rights of 125 employees

has little application to a company employing approximately 14 men.

“In summary, we find that the Dissolved Corporation is no longer in existence and available to arbitrate. We find that the King Corporation is not the successor to the Dissolved Corporation.” . . . (229 N.Y.S. 2d at p. 481).

2. Absence of Continuity of Ownership.

There is no continuity of ownership whatever. General Motors acquired no stock in Thomas; Thomas acquired none in General Motors (Appx. 234, 224, 885). Nor did either Thomas or Ehlers acquire any interest in each other's business (Appx. 161-2, 224).

3. Sale of Assets Rather Than of Business.

The principal distinction between the sale of a business and the sale of assets would appear to be the sale of goodwill, consisting primarily of an established relationship with customers, in the former case.

In the present case, not only was good will not included in the assets sold, but no customer lists were purchased; and in order to establish a working prospect file, Thomas bought from a Long Beach company a list of Cadillac registrations for some years back (Appx. 147, 150, 260; R. 158-9).

Also, no trade name was acquired (Appx. 885). Indeed, so far as the public was concerned, General Motors' new car advertising had not even specified whether the vehicles advertised were at Bixel or Wilshire (Appx. 219).

No liabilities of General Motors were assumed (Appx. 885).

General Motors terminated all its employees prior to the transfer, and Thomas hired an entirely new labor force, only a relatively small minority of which had

been employees of General Motors (Appx. 143, 259, 878).

In view of all these factors, we believe it is accurate to state that what was sold was essentially "assets" and not a business.

**4. The Transfer Occurred Over Six and One-Half Years
After the Last Union Certification.**

The Machinists was certified for a unit of General Motors employees at both Bixel and Wilshire on August 1, 1957 (Appx. 1104-5). The Painters was certified for an analogous unit on November 6, 1958 (Appx. 1107-9).

Thomas' initial contract with General Motors for the acquisition of the dealership at Bixel was executed May 11, 1965 (Appx. 727-50). The actual franchise agreement was executed June 1, 1965 (Appx. 140-1).

5. Location of Thomas After the Transfer.

While General Motors had transacted business at Bixel prior to the transfer to Thomas, in essence Bixel, Wilshire, and Vermont together constituted the "Los Angeles branch" of the Cadillac Motor Car Division of General Motors (Appx. 940, 226-7, 299, 216, 212).

Thomas acquired only a two-year lease of the site of Bixel (Appx. 254-5). The principal building there was of loft-type construction (having been built for use as a furniture manufacturing center) and was poorly suited for an automobile dealership; Thomas did not intend to stay there permanently (Appx. 255).

It can hardly therefore be said that location was a significant factor in the transaction.

Indeed, in *Reagan: The Contractual Obligations of a Successor Employer Under the Collective Bargaining Agreement of a Predecessor*, 113 Univ. of Penn. Law.

Rev. 914, (1965), it is questioned (pages 922-3) whether location of the plant should be a criterion in determining successorship.

6. No Anti-Union Motive Present.

In *Moss: Purchase of a Business*, 43 Calif. State Bar Journal 387, 389 (1968) it is stated:

“One additional factor must be stressed; namely, the good faith of the transfer. Where the purpose of the sale was to avoid existing labor obligations, as in the famous Old South case, the courts and the Board have consistently found a successor status.”

The rationale of such cases may be, not that a “successorship” exists, but simply that as a matter of policy, the courts will not effectuate transfers made for the purpose of avoiding contractual or statutory labor obligations. This result follows whether the bad faith is that of the transferor (*e.g.*, *NLRB v. Herman Brothers Pet Supply, Inc.*, (6 Cir) 325 F. 2d 68 (1963)) or of the transferee (*e.g.*, *K.B. & J. Young's Super Markets, Inc. v. NLRB*, (9 Cir) 377 F. 2d 463 (1967) (Pet. Br. 43)—buyer caused mass discharge of the employees prior to sale for anti-union reasons).

No such motive is even remotely suggested here.

As to General Motors, the first representation election in 1957 was held pursuant to a consent-election agreement (Appx. 1003). A one-year agreement was executed in 1957 (Appx. 946, 948). Three-year agreements followed with regularity in 1958, 1961 and 1964 (Appx. 948, 952-3, 577-636).

No question of the *bona fides* of General Motors' change of policy from operating Bixel and Wilshire itself to having them operated by independent dealers is, or could be, raised by anyone.

As early as January 12, 1965, General Motors notified the unions that it was considering such a change (Appx. 959-60). Thereafter it kept the unions advised of developments (Appx. 1077-1085).

Indeed, in anticipation of such a transfer, on April 28, 1965, the unions executed a supplement to their December 1, 1964 agreement with General Motors, respecting seniority rights of employees, in order to facilitate the subsequent transfers (Appx. 973-4, 640-1).

As to Thomas, La Rue Thomas, the principal figure therein, had had contracts with both unions as far back as 1937 while in a dealership in other locations (Appx. 237).

Indeed, the attorney for the unions stated: "I am willing to stipulate that this gentleman (La Rue Thomas) and Cecil Thomas (La Rue Thomas' father) enjoyed very fine relations with the unions involved throughout the many years of their dealings" (Appx. 238).

The attorney for the General Counsel joined in the stipulation (Appx. 238).

In the present case, it is undisputed both that Thomas did not request General Motors to terminate its employees, and that unionism was not a factor in any way in Thomas' hiring of its own employees (Appx. 995, 801, 278-9).

As stated in the opinion of the NLRB in this case:

"Moreover, it is clear that both Thomas and Ehlers selected their employees herein involved on the basis of skill and ability, and were in no way influenced by union membership of the job applicant." (Appx. 58-9).

7. Other Changes in Methods of Transacting
Business by Thomas.

General Motors did not lease automobiles (Appx. 256, R. 147). Thomas (through T & T Leasing, its wholly owned subsidiary, located at the same address) did (Appx. 256).

General Motors placed about 50% of its customer installment financing in Los Angeles with its affiliate, General Motors Acceptance Corporation, and about 50% with a local bank (Appx. 314). Thomas placed the bulk of its customer financing with United California Bank (Appx. 264).

All General Motors' materials and service contracts (including linen and office machinery repair) were terminated by it as of May 28, 1965; Thomas did not take any of them over (Appx. 314-5, 265). Thomas thereafter selected its own contractors (Appx. 265).

Thomas bought from a Long Beach company a list of Cadillac vehicle registrations for some years back for use as a working prospect file (Appx. 260; R. 158-9). General Motors had no such program (Appx. 260).

General Motors had a contract with a building maintenance company (Appx. 227). Thomas does its own maintenance with its own janitors (Appx. 228).

Thomas financed its new car purchases through United California Bank (Appx. 264). General Motors, of course, was the manufacturer of the cars which Thomas purchased.

General Motors paid its painters, body men, trimmers, sheet metal men, and lubrication men on an hourly rated basis, (i.e., the time which it estimated the particular type of operation would require, whether it actually took more or less time); Thomas paid the

same employees a flat hourly rate (R. 496; Appx. 815). It established its own rate (Appx. 266).

**8. Supervisory Personnel of General Motors Contrasted
With Those of Thomas.**

As was stated in the opinion of the NLRB in this case regarding the supervisory personnel of Thomas and of Ehlers:

“the supervisory hierarchy bears little resemblance to that formerly existing under GM.” (Appx. 58; emphasis added).

Under General Motors, a single general manager was in charge of both the Bixel and Wilshire stores, and two San Francisco stores as well (Appx. 208-9, 330). He received his orders from General Motors in Detroit (Appx. 209). The top management employees were paid from Detroit (Appx. 213). Many of them had functions with regard to both the Bixel and the Wilshire stores (Appx. 209-212).

As we have previously stated, the supervisory personnel in Los Angeles had no authority over major expenditures and capital improvements, employment of attorneys, advertising, and insurance, among other things; these were all administered by the home office in Detroit (Appx. 217, 218, 219). In the next subsection hereof we shall also point out that labor relations in Los Angeles was also administered by the home office of General Motors in Detroit.

The Service Supervisory Employers of General Motors at Bixel as of May 31, 1965, are listed on an exhibit (Appx. 714-5). There were nine.

Only three of these nine became employees of Thomas (Appx. 245).

The executives, department heads, and foremen of Thomas as of June 30, 1965, are listed on an exhibit

(Appx. 1114). There were 21 in number, which included various categories in addition to service supervisory personnel.

Of these 21, 7 had worked for General Motors. In addition to the 3 mentioned, a used car salesman with General Motors became assistant used car manager with Thomas; the supervisor of accounting with General Motors became business manager with Thomas; and a foreman-building maintenance, and foreman-annex held those position with both General Motors and Thomas.

The key men in the service department were Loyd Coats, the general service manager, who had previously been service manager and in charge of all shop employees for five years at Cecil L. Thomas & Sons, Inc. in Harbor City, California (Appx. 800), and his assistant, Bill Hinman, who had been a service manager at a Pontiac dealership (Appx. 279).

The general manager, new car sales manager, general used car manager, parts department manager, and credit manager, among others, were all personnel who had not been in the employ of General Motors (Appx. 1114, 714-15, 717-9).

9. Employees of General Motors Contrasted With Those of Thomas.

We have already pointed out that, of 75 persons employed by General Motors at Bixel in categories covered by the collective bargaining agreement, only 16 were hired by Thomas (Appx. 717-9, 259, 878).

We have also pointed out that it is uncontradicted that, in selecting its employees unionism was not a factor considered by Thomas, or mentioned by either Thomas or the former General Motors employees at Bixel, all of whom were interviewed by Thomas as prospective employees (Appx. 28, 279, 801, 278).

In the foregoing respects, this case is much like *NLRB v. John Stepp's Friendly Ford, Inc.*, (9 Cir.) 338 F. 2d 833 (1964) where a franchised Ford-Lincoln-Mercury dealer (Westward) six months after the certification of a union for a unit consisting of his salesmen, for personal reasons and bad health, sold assets of its business to Stepp, conditioned upon the issuance of a franchise by the manufacturer to Stepps (which was done).

Westward closed business and terminated its employees on May 11. During the following week Stepp took applications for employment and interviewed most of the Westward employees. On May 19, Stepp commenced operations with 30 employees, 21 of which had worked for Westward, including 3 of the 8 salesmen. 4 salesmen were brought by Stepp from his Chrysler dealership across the street.

Stepp refused to bargain with the union, and the NLRB ordered it do so. The Court of Appeals refused to enforce the order, stating:

"The problem we face is that which arises when we have both a new owner and a substantial change in the personnel of the employee unit." . . .

"The controlling question here, it would seem to us, is whether the new owner may rationally be said in substance, as to the unit in question, to have taken over and succeeded to his predecessor's employees. If he has not—if, on the contrary, he has within the unit in question secured his own employees—then he is not, as to the employees in question, a successor. He is their original employer. . . .

"In the case before us it cannot rationally be said that the company has taken over and succeeded to Westward's salesman unit. Out of the

twelve Westward salesmen only three, after interviews, were employed. It is clear from the record that they were not employed because of their Westward connection, but because Stepp thought that they were the best he could get to fill out his sales force. Furthermore, half of the new employee unit consisted of men who already were Stepp employees. Even assuming that a Westward employment status continued to attach to the three Westward salesmen, still the character of the new unit clearly was more Stepp than Westward." (338 F. 2d at p. 836).

Cf. Federal Electric Corp., 167 NLRB No. 63, 66 LRRM 1089, 1091 (1967) where the NLRB, in holding that no successorship was present, said:

"Also, it is significant that the respondent, for lawful economic reasons, employed only 11 of Data's 28 former employees for an operation which requires approximately 30 employees."

However, in the present case, there is an additional factor which makes it a much stronger one than either *Stepp* or *Federal Electric Corp.*

We have already pointed out that, under General Motors, all major policy decisions concerning Bixel were made from the head office of General Motors and its Cadillac Motor Car Division in Detroit (Appx. 209, 218, 217, 219, 213).

However, this was equally true of its labor relations.

Machinists was first certified as a bargaining agent for certain employees at both Bixel and Wilshire on August 1, 1957 (Appx. 1103-5). Thereafter the collective bargaining negotiations on behalf of General Motors was conducted by Joseph G. Pais, then Director of Labor Relations of the Cadillac Motor Car Division

of General Motors Corporation in Detroit (Appx. 936, 934, 943-5). He was the "principal spokesman for the Company in these negotiations." (Appx. 941).

In August of 1958 Mr. Pais became Assistant Personnel Director of the Cadillac Motor Car Division of General Motors Car Division in Detroit (Appx. 934).¹³

Thereafter he participated in negotiations for the 1958 renewal contract, and negotiated the 1961 renewal contract (Appx. 948). He also negotiated the renewal contract of 1964 (Appx. 948). He signed this contract on behalf of General Motors (Appx. 636).

In all the various contacts, both oral and written, between General Motors and the unions in the period between January and May, 1965 relative to the takeover of Bixel and Wilshire by Thomas and Ehlers, respectively, Mr. Pais represented General Motors (Appx. 959-60, 1077-81; 640-1).

The 1964 collective bargaining agreement was between "CADILLAC MOTOR CAR DIVISION OF GENERAL MOTORS CORPORATION, a Delaware Corporation having service stations located at 1076 West Seventh Street, and 5151 Wilshire Boulevard, City of Los Angeles, State of California, party of the first part" and the two unions, parties of the second part (Appx. 577).

In a nutshell, the labor relations for Bixel and Wilshire was conducted by the Detroit headquarters of General Motors.

As to the contents of the collective bargaining agreement, it is stated in the concurring opinion of Member

¹³In 1965, when his deposition was taken, Mr. Pais had been employed by the Cadillac Motor Car Division of General Motors Corporation for about 40 years (Appx. 934).

twelve Westward salesmen only three, after interviews, were employed. It is clear from the record that they were not employed because of their Westward connection, but because Stepp thought that they were the best he could get to fill out his sales force. Furthermore, half of the new employee unit consisted of men who already were Stepp employees. Even assuming that a Westward employment status continued to attach to the three Westward salesmen, still the character of the new unit clearly was more Stepp than Westward." (338 F. 2d at p. 836).

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¹³In 1965, when his deposition was taken, Mr. Pais had been employed by the Cadillac Motor Car Division of General Motors Corporation for about 40 years (Appx. 934).

Jenkins of the NLRB (in which member Fanning joined):

“Indeed, GM’s agreement with the Unions was patterned after its nationwide contract with another union. Also, under the contract covering GM’s operation herein involved, an employee continued to accrue seniority thereunder while employed in any GM plant on national defense work. The holiday, vacation, and paid absence eligibility computations were based upon employment in any GM plant. The contract also included GM’s national Pension Plan, Insurance Program, and Income Security plan.” (Appx. 62).

II.

“GOOD FAITH DOUBT” IS NOT AN ISSUE ON THIS APPEAL.

As the first point in their Argument, petitioners attempt to show that the defense of intervenors before the NLRB relative to “good faith doubt as to majority status” was not well taken, referring to the presumptions of majority status arising from the existence of valid certifications, and the existence of a collective bargaining agreement (Pet. Br. 23-30).

However, if intervenors are not “successors”, the question of good faith doubt as to majority status does not arise.

Inasmuch as the NLRB decision was made solely on the ground that intervenors were not “successors,” and did not consider any of the other defenses raised by intervenors, the question so discussed by petitioners is not an issue on this appeal.

Conclusion.

In *NLRB v. Alamo White Truck Service, Inc.*, (5 Cir) 273 F. 2d 238 (1959) the court said:

“As the trial examiner put it, the ‘parental relationship between White and its San Antonio operation was abrogated—the umbilical cord had been severed.’ We add, and the child bears no resemblance to its parent.” (p. 242).

In the present case there was not one such “non-successor” child, but two—and from the day of their birth they were in competition with, among others, each other.

It is respectfully submitted that the order of the National Labor Relations Board, dismissing the complaint, should be affirmed.

Respectfully submitted,

H. BURDETTE FREDRICKS,

HENRY W. LOW,

EDWARD A. McDERMOTT,

Attorneys for Intervenor

Thomas Cadillac, Inc.

Of Counsel:

HOGAN & HARTSON.

BRIEF OF INTERVENOR LOU EHLERS
CADILLAC.

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21,972

INTERNATIONAL ASSOCIATION OF MACHINISTS,
DISTRICT LODGE 94, AFL-CIO; and AUTOMOTIVE
MARINE, PRODUCTION FINISHERS, EQUIPMENT,
MAINTENANCE AND PUBLIC SERVICE PAINTERS
LOCAL UNION 1798, BROTHERHOOD OF PAINTERS,
DECORATORS AND PAPERHANGERS OF AMERICA,
AFL-CIO,

Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent,

THOMAS CADILLAC, INC., and LOU EHLERS CAD-
ILLAC,

Intervenors.

ON PETITION TO REVIEW AND SET ASIDE AN ORDER OF
THE NATIONAL LABOR RELATIONS BOARD.

United States Court of Appeals

for the District of Columbia Circuit

Circuit

RICHARD W. LUND,

JOSEPH A. WHELOCK,

615 South Flower Street,
Los Angeles, Calif. 90017,

*Attorneys for Intervenor
Lou Ehlers Cadillac.*

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Nathan J. Vaulson
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IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21,972

INTERNATIONAL ASSOCIATION OF MACHINISTS,
DISTRICT LODGE 94, AFL-CIO; and AUTOMOTIVE
MARINE, PRODUCTION FINISHERS, EQUIPMENT,
MAINTENANCE AND PUBLIC SERVICE PAINTERS
LOCAL UNION 1798, BROTHERHOOD OF PAINTERS,
DECORATORS AND PAPERHANGERS OF AMERICA,
AFL-CIO,

Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent,

THOMAS CADILLAC, INC., and LOU EHLERS CAD-
ILLAC,

Intervenors.

ON PETITION TO REVIEW AND SET ASIDE AN ORDER OF
THE NATIONAL LABOR RELATIONS BOARD.

**BRIEF OF INTERVENOR LOU EHLERS
CADILLAC.**

STATEMENT OF FACTS.

The petitioning Unions' Statement of Facts is slanted, inaccurate, and incomplete. However, we are unable within the permitted brief length (Ehlers' Motion for relief from the 50 page maximum having been denied) to include herein a proper summary of the lengthy record.

The facts were not in dispute, so there was no conflict in the evidence and no problems of resolving credibility. Since there was no dispute on the facts, to expedite the proceeding the parties introduced the evidence in the easiest manner possible. Thus, they submitted, mostly without objection, depositions in other proceedings, affidavits, unsworn written statements, hearsay, and conclusionary statements. There were relatively few objections to any of the exhibits or testimony. No Exceptions were filed by any of the parties to the Trial Examiner's rulings on the evidence.

SUMMARY OF ARGUMENT.

To establish a refusal to bargain in violation of Section 8(a)(5) of the National Labor Relations Act [29 U.S.C.A. §158(a)(5)] the General Counsel of the Board had the burden of proving: (1) the described units were appropriate for the purposes of collective bargaining; (2) the Unions were the bargaining agents of Ehlers' employees in such respective units; (3) the Unions requested Ehlers to recognize them as bargaining agents (4) in the described units; (5) Ehlers refused to so recognize the Unions; and (6) Ehlers did not have a good faith doubt that the Unions represented its employees. Ehlers admitted that it had not recognized or bargained with the Unions. However, the General Counsel failed to sustain his burden of proof on each of the other five issues.

(1) **UNITS INAPPROPRIATE.** The General Counsel made no effort to prove the units were appropriate. In-

stead, he relied solely on the fact that the Unions had been certified as bargaining agents of GM's employees in alleged appropriate units and his claim that Ehlers was a successor to GM. Ehlers denied [Jt. App. 346, 347, 361] that the alleged Machinists' and Painters' multiplant units of GM were appropriate and also denied [Jt. App. 348, 351, 362, 363] that the alleged Painters' and Machinists' units of Ehlers' employees were appropriate.

The alleged units are inappropriate in two principal respects. First, there being no evidence that the painters were a separate craft or department, there is no basis under Board principles for a unit of painters separate from the mechanics, and in fact under GM, notwithstanding the separate certification, they were not separated [Jt. App. 308, 577, 580, 590-591, 595-596, 634, 637, 949, 955]. Second, under present policy of the Board, it is clear that in an automotive service shop the appropriate unit must include all the shop employees. *W. R. Shadoff*, 154 NLRB 992 (1965); *Austin Ford, Inc.*, 136 NLRB 1398 (1962). Under these decisions the unit must include the service advisers, parts clerks, dispatchers, and janitors [Jt. App. 191-192, 303, 309-310]. In other words, all the employees (except supervision) in the separate service shop area, including the painters, constitute the appropriate unit. There is no basis for excluding the service advisers, parts clerks, dispatchers, and janitors, or the painters, from the unit [Jt. App. 191-193, 302-312]. The so-called mechanics unit was not a craft or departmental unit; it included also washers, polishers, lubricators, etc. [Jt. App. 577].

The NLRB certifications of the GM Unions in 1957 and 1958 do not warrant a finding that the GM units were appropriate. While a Board determination of unit appropriateness must be given great weight, this is not true where there has been no such Board determina-

tion, as in the instant case where the certification by the Regional Director was based on an election agreement or when the unit has been determined voluntarily by contract. Cf. *General Elec. Co.*, 107 NLRB 70 (1953); *Humble Oil & Refining Co.*, 115 NLRB 1485 (1956). Moreover, the actual GM recognized unit differed from the certified units in that inspectors, time-keepers, parts clerks, tower operators, operating engineers, and dispatchers were excluded though not excluded by the certification [Jt. App. 578, 1100], pick-up and delivery men were included though excluded by the certification [Jt. App. 145, 319-329, 398-399, 1100], and the painters were actually combined with the mechanics. Finally, the GM unit was on a multiplant basis. For the foregoing reasons, the alleged units at GM cannot establish the appropriateness of the units for Ehlers' employees.

(2) LACK OF MAJORITY STATUS. With reference to the major issue of whether the Unions were bargaining agents for Ehlers' employees, no claim was made that Ehlers' employees had designated or desired the Unions as bargaining representatives. The General Counsel did allege that the Unions were bargaining agents of GM's employees and Ehlers was a successor to GM (all of which was denied by Ehlers [Jt. App. 347, 348, 362]) and, therefore, the Unions presumably continued as bargaining agents of Ehlers' employees. The evidence established that no such presumption existed and that Ehlers' employees did not desire representation by the Unions, or either of them. Further, the record will not support a finding that Ehlers was a successor to GM. There was a complete failure of proof that the Unions were bargaining agents for Ehlers' employees.

(3) NO BARGAINING DEMAND. It is elementary that there can be no refusal to bargain in violation of Section 8(a)(5) unless there is first a proper demand by

the union that the employer bargain. *NLRB v. Rural Elec. Co.*, 296 F. 2d 523 (10th Cir. 1961).

The facts established that the Unions never claimed that a majority of Ehlers' employees desired union representation and they did not ever demand that Ehlers recognize them as bargaining agent [Jt. App. 139, 194-195, 574-576, 642-648, 1131-1133]. While it is clear that the Unions did demand that Ehlers recognize the GM union contract as binding on it and that Ehlers arbitrate disputes thereunder, this is not the same as claiming to be bargaining agent for all Ehlers' unit employees. *Cf. Sheboygan Sausage Co.*, 156 NLRB 1490 (1966). Thus, in the *Wiley* case, on which the Unions rely so extensively, the union was not the bargaining agent for the successor's employees despite the holding it was required to arbitrate. *John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543 (1964). Since the Unions did not demand that Ehlers recognize and bargain with them as representatives of Ehlers' unit employees, Ehlers was not guilty of violating Section 8(a)(5) by failing to bargain, even assuming it was a successor to GM.

(4) NO PROPER UNIT DESCRIPTION. There can be no refusal to bargain when the bargaining demand does not adequately describe the unit. *NLRB v. Morris Novelty Co.*, 378 F. 2d 1000 (8th Cir. 1967); *National Can Co. v. NLRB*, 374 F. 2d 796 (7th Cir. 1967). Assuming that the Unions' letters herein could be construed as a bargaining demand, at no time did the Unions sufficiently describe the unit or units as to create any duty to bargain. Further, where the union's recognition demand is indefinite with reference to the unit, the employer has no duty to seek a clarification. *NLRB v. Jackson Press, Inc.*, 201 F. 2d 541 (7th Cir. 1953). Assuming, then, that Ehlers was a successor and that the Unions requested bargaining, Ehlers

had no duty to bargain because the Unions did not describe the unit or units in which they allegedly sought to bargain.

(5) GOOD FAITH DOUBT. Upon the same assumptions, Ehlers had no duty to bargain because of its good faith doubt that the Unions were in fact the representatives of its employees. The principle is fully recognized that even in a successorship situation the successor's good faith doubt of the union's majority status will serve as a defense to a refusal-to-bargain charge. See *Makela Welding, Inc. v. NLRB*, 387 F. 2d 40, 46 (6th Cir. 1967); *Rohlik, Inc.*, 145 NLRB 1236, 1240 (1964).

The evidence was undisputed that Ehlers did have good faith doubts that it was a "successor" to GM and that the Unions, or either of them, were the majority representative of any group of its employees [Jt. App. 195-199].¹ Moreover, the objective facts, discussed hereinafter, unquestionably established a reasonable basis for such belief. The single circumstance that the Unions assert rights to representation of Ehlers' employees in the smaller part (Wilshire) of the former GM multiplant unit would be sufficient alone to serve as reasonable grounds for belief that the Unions were not majority representatives. See *NLRB v. Downtown Bakery Corp.*, 330 F. 2d 921, 926 (6th Cir. 1964), *infra*, page 36. Further, "The ambiguity in the extent of the unit for which representation was claimed fully justified a good faith doubt on the part of the Company." *Phelps-Dodge Copper Products Corp. v.*

¹The Trial Examiner did not make any finding to the contrary, as he could not under the evidence. But the Trial Examiner in effect concluded [Jt. App. 42] that Ehlers did not have a reasonable basis for believing that the Union did not represent a majority of GM's employees in the multiplant contract units as of May of 1965. Ehlers probably had no belief one way or the other on this irrelevant matter.

NLRB, 354 F. 2d 591, 593 (7th Cir. 1965); *Lane Drug Co. v. NLRB*, 391 F. 2d 812 (6th Cir. 1968).

It is also important that this is not a case where the union's majority status had been destroyed because of unfair labor practices of the employer. Here, Ehlers had not committed any unfair labor practices, had no union animus, and fully accepted the principles of collective bargaining [Jt. App. 199, 319]. Under the circumstances here present no knowledgeable employer could help but doubt that the Unions represented his employees. With less conclusive circumstances, in each of the following cases the Board held that the successor had reasonable grounds for its good faith doubt of majority status and so was not guilty of a refusal to bargain in violation of the Act. *Alabama Precast Products Co.*, 163 NLRB No. 99, 65 LRRM 1041 (1967); *Paramount Paper Products Co.*, 154 NLRB 1064 (1965); *Mitchell Standard Corp.*, 140 NLRB 496 (1963); *Diamond Nat'l Corp.*, 133 NLRB 268 (1961).

ARGUMENT.

AS IT WAS NOT ESTABLISHED THAT THE UNIONS WERE THE BARGAINING AGENTS OF EHLERS' EMPLOYEES IN ANY UNIT OR UNITS OF ITS EMPLOYEES, EHLERS HAD NO DUTY TO BARGAIN WITH THE UNIONS, OR EITHER OF THEM.

I.

Basic Considerations.

As this Court observed in a plant relocation case, which the Court recognized as involving similar principles to a successorship case, that Ehlers' conduct "was precipitated by legitimate economic reasons and was in no way anti-union is not disputed. This is an important basic factor in the dispute now before us." *International Union, UAW v. NLRB*, 394 F. 2d 757, 759 n. 14 (D.C. Cir. 1968). Ehlers had not committed any unfair labor practices and had no union animous. It was not opposed to the principles of collective bargaining, as established by Lou Ehlers' amicable relations with the United Automobile Workers at his Wisconsin Buick agency [Jt. App. 199, 319].

A second basic consideration is that all of the evidence, as we discuss below (pages 13-15), indicates that the employees of Ehlers did not desire representation by the Unions. Thirdly, Ehlers did have a good faith doubt that the Unions represented its employees (*supra*, page 5).

The Labor Management Relations Act of 1947, the so-called Taft-Hartley Act, amended Section 7 of the N.L.R.A. [29 U.S.C.A. §157] to make "the right to refrain from any or all such activities" as fundamental a right as the right "to bargain collectively." This, under the amendment, is "a concomitant right, guaranteed by the statute, of equal rank and dignity with the

right to select a union.” *NLRB v. Logan Packing Co.*, 386 F. 2d 562, 564 (4th Cir. 1967). This Court similarly recognized as “equally protected by the Act with the right of the workers to choose that representative is the right to have none” and that this was “one of the Act’s most basic policies.” *Local 57, ILGW v. NLRB*, 374 F. 2d 295, 300, 301 (D.C. Cir. 1967) *cert. den.* 387 U.S. 942 (1967). Also, an employer “is prohibited from bargaining with anybody except a representative selected by a majority of employees.” *International Union, UAW v. NLRB*, 394 F. 2d 757, 762 (D.C. Cir. 1968). As observed in *NLRB v. Arkansas Grain Corp.*, 390 F. 2d 824, 829 (8th Cir. 1968), if the employer “had acceded to either of the Union’s demands for recognition and bargaining in the mistaken belief that Union did represent a majority of the employees, both might have engaged in an unfair labor practice in violation of Sections 8(a)(1) and 8(b)(1)(A) of the Act.”

The latter quotes are based upon the decision in *International Ladies’ Garment Workers’ Union v. NLRB*, 366 U.S. 731 (1961) wherein the Supreme Court held that both the employer and the union were guilty of violating the Act by the recognition of the minority union, notwithstanding the good faith belief of both that the union did have majority status, and concluded with reference to such conduct (p. 737), “There could be no clearer abridgement of §7 of the Act.” Thus, in the instant case, recognition of the Unions by Ehlers would have been a significant infringement of the rights the Act was designed to protect unless the Unions had had the requisite majority status.

Under such circumstances an employer, such as Ehlers, attempting to comply with the Act is in a dilemma. He may be found guilty of violating the Act if he recognizes the union or if he refuses to do so. See *Lane*

Drug Co. v. NLRB, 391 F. 2d 812, 820 (6th Cir. 1968); *Colecraft Mfg. Co. v. NLRB*, 385 F. 2d 998, 1007 (2nd Cir. 1967). As observed in the *Lane Drug* case, "the best procedure to be followed in a case of this kind is a Board-conducted election." Further, as the Court concluded in *NLRB v. Ben Duthler, Inc.*, 395 F. 2d 28, 34 (6th Cir. 1968), "The purpose of the Board is to protect the bargaining rights of employees, not the bargaining rights of unions."

So in the instant case, as in *American Concrete Pipe of Hawaii, Inc.*, 128 NLRB 720, 722 (1960), where the Board ordered an election among the purchaser's employees, "the policies of the Act will best be effectuated by giving [Ehlers] employees the opportunity to determine for themselves whether they desire collective bargaining representation."

We confess an inability to clearly understand the Unions' arguments at pages 23-30, but it seems the Unions are now taking the same position as Ehlers that this matter should have been resolved by an election, though they previously had resisted such a course [Tr. 97-98, 109-112]. But judging from the emphasis in the Unions' quotations (pp. 25, 26, 28, and see pp. 24, 28, 30), apparently the Unions are suggesting that Ehlers' proper course was to file a representation petition and to recognize the Unions while the matter was being processed.

In connection with any such contention it should be noted that the Unions' assertions (pp. 23-24, pars. 3, 4) that they unequivocally requested recognition, that Ehlers did not doubt or question the Unions' majority status, and that Ehlers had available the NLRB election procedures are all contrary to the undisputed facts. The actual facts are that though the Unions requested Ehlers to accept the GM union contract or arbitrate thereunder, the Unions did not assert

they represented a majority of Ehlers' employees or request recognition as alleged bargaining agents [Jt. App. 642-648, 1131-1133]. Ehlers at all times doubted that the Unions represented its employees [Jt. App. 92], and expressed such doubt at its first opportunity. In the latter connection, there could be no occasion to express a doubt until a claim of majority status was first made. Yet, notwithstanding the uncertainty that even the Unions' unfair labor practice charges of June 3rd and 4th expressed a claim of majority representation [Jt. App. 327, 335], in its June 14th reply thereto [Jt. App. 574, 576] Ehlers expressed its doubt that the Unions represented its employees.

With reference to the filing of a representation petition, contrary to the implications of the Unions, an employer may refuse to continue to recognize an established union after the certification year without filing an election petition, if it has a good faith doubt that the Union still represents its employees. See cases quoted at pages 16-17, *infra*. Obviously a purchaser or successor would not have any less right. Further, the failure of an employer to file a petition for an election in such circumstance is not inconsistent with his good faith doubt. *NLRB v. Downton Bakery Corp.*, 330 F. 2d 921, 927 (6th Cir. 1964).

Actually, Ehlers nevertheless intended to file a representation petition when and if the Unions claimed representation rights [Jt. App. 1134-1135]. It could not do so before, because an employer petition prior to a recognition demand would be dismissed. *Raymond F. Schweitzer, Inc.*, 165 NLRB No. 84, 65 LRRM 1367 (1967); *Maclobe Lumber Co.*, 120 NLRB 320 (1958); *Palace Knitwear Co.*, 93 NLRB 872 (1951). Moreover, Ehlers could not file such a petition until it had hired a representative number of its employees, which was not until June 1st. Any such premature petition would

also be dismissed. *Cramet Inc.*, 112 NLRB 975 (1955); *cf. General Extrusion Co.*, 121 NLRB 1165 (1958).

The Unions actually precluded Ehlers from filing such a petition by their precipitous filing of unfair labor practice charges. The conclusion is inescapable that the Unions rushed the filing of their unfair labor practice charges on the third day of Ehlers' operation for just such purpose. See *NLRB v. Laystrom Mfg. Co.*, 359 F. 2d 799, 801 (7th Cir. 1966). In this connection, the Unions did not file their court action against Ehlers to compel arbitration until June 28th [Jt. App. 98, 104].

Under Board rules, the Board will not process a representation petition while unfair labor practice charges are pending [Jt. App. 1134-1135]. *Lane Drug Co. v. NLRB*, 391 F. 2d 812, 817 n. 5 (6th Cir. 1968); *Furr's Inc. v. NLRB*, 381 F. 2d 562, 570 (10th Cir. 1967) *cert. den.* 389 U.S. 840 (1967) ("the Board's policy of not conducting a representation election while unfair labor practice charges are pending has long met with court approval"). Ehlers, therefore, after the filing of the charges did not attempt to file a petition, not only because the Unions still had not claimed to be majority representatives, but also because in view of the charges it "would have been futile" to do so. *Gulfmont Hotel Co.*, 147 NLRB 997, 1002 (1964) *enfd* 362 F. 2d 588 (5th Cir. 1966) [Jt. App. 1134-1135].

The Unions pursued a course which precluded a Board determination of the issue in a representation proceeding. Moreover, the Unions' picketing of Ehlers, assuming (as the Trial Examiner found [Jt. App. 29] without any evidentiary support) the same was because of Ehlers' failure to recognize the Unions, was a violation of Section 8(b)(7)(C) of the Act [29 U.S.C.A. §158(b)(7)(C)] which was "designed to substitute Board elections for picketing of unreasonable duration

as a means for resolving disputes over representation.” *Teamsters Local 115 (Vila-Barr Co.)*, 157 NLRB 588, 589 (1966); *Hoffman v. San Francisco Stereotypers & Electrotypers Union Local 29*, 64 LRRM 2687 (USDC, N.D. Calif. 1967) (not officially reported).

In sum, the issue of Ehlers’ alleged successorship to GM involves a question of majority representation. One of the two basic purposes of the N.L.R.A. was to provide an agency to resolve such questions by secret ballot. Such procedure protects fully the rights of the employees, the union, and the employer. The doctrine of successorship certainly should not be adopted as a substitute for this procedure in the absence of conclusive evidence that (1) all elements of a true successorship are present and that (2) it may be confidently assumed that the successor’s employees desire representation by the union. The evidence in this case will not support either conclusion.

II.

There Was No Proof That the Unions, or Either of Them, Were Bargaining Agents for Any Unit or Units of Ehlers’ Employees.

It is elementary that there can be no finding of a violation of Section 8(a)(5) of the Act unless the Union is bargaining agent for the employees. The complaint alleged that since June 1, 1965 the Machinists represented a majority of Ehlers’ employees in a unit of “mechanics, polishers” etc. (the GM Machinists unit, limited to Wilshire) employed by Ehlers [Jt. App. 349, 348], and that the Painters similarly represented Ehlers’ painters [Jt. App. 352, 351]. Ehlers denied these allegations [Jt. App. 362, 363-364]. There was no evidence that a majority, or any, of Ehlers’ employees in any unit had designated or selected the Unions, or either of them, to be their bargaining agent or that any of them desired such representation.

Actually, it was not claimed at the hearing by the General Counsel or by the Unions nor by the Unions in their brief herein that a majority of Ehlers' employees desired representation by the Unions. This was even shown by the pleadings. Thus, while the complaint alleged that the Unions prior to May 31, 1965 had been "designated or selected" by a majority of the unit employees of GM as bargaining agent [Jt. App. 347-348], with reference to Ehlers' employees it merely alleged that the Unions "have represented" them since June 1, 1965 [Jt. App. 349, 352].

Not only was there a failure of proof by the General Counsel that Ehlers' employees wanted Union representation, the evidence was conclusive that a majority of Ehlers' employees did not desire such representation. When it is considered that the record is barren of any evidence that a single employee of Ehlers, or even of GM, at any time in 1965 expressed a desire for either of the Unions to be their bargaining agents [Jt. App. 198] or that Ehlers ever said or did a single thing to discourage Union representation, two facts alone require a finding that the Unions did not represent Ehlers' employees. First, a large majority of the GM unit employees at Wilshire voted in the NLRB election against representation by the Machinists [Jt. App. 1135-1137]. This was the only opportunity such employees had to express their desires on the question of union representation.² Second, not a single employee of Ehlers, in-

²Theoretically, the employees at Wilshire could have filed a decertification petition near the termination of the union contract in 1951 and 1954. But this practically could not be expected. So long as the larger majority of the employees at Bixel desired Machinists representation, the Wilshire employees could not achieve decertification. This is so since a decertification election would have to be held in the multiplant unit, including Bixel. *Pet Dairy Products Co.*, 118 NLRB 1562 (1957); cf. *General Motors Corp.*, 120 NLRB 1215 (1958).

(This footnote is continued on the next page)

cluding those who were formerly employed by GM, refused to report to work because of the Unions' picket line at Ehlers' premises [Jt. App. 156-157, 198, 319]. The crossing of a picket line is evidence of a union's disfavor with the employees. *Old Line Life Ins. Co.*, 96 NLRB 499 (1951) *pet. rev. dsmd* 200 F. 2d 52 (7th Cir. 1952); *Neuman Transit Co.*, 138 NLRB 659 (1962); *Star Expansion Industries Corp.*, 164 NLRB No. 95, 65 LRRM 1127 (1967).

There was also substantial additional evidence requiring the conclusion that Ehlers' employees did not desire representation by the Unions, such as the voluntary statement by two of the GM employees at the time of being interviewed by Ehlers (the only ones who made any statement) that they planned on dropping their union cards [Jt. App. 196-197], the statements of some of the applicants for employment that they would not accept employment if Ehlers was a union shop [Jt. App. 196], the fact that Ehlers was a small local dealer, which gave assurance to its employees of local ownership and management with the attention and consideration possible in such a relationship, as contrasted with the neglect of employees that is commonly found where the employer is a large nationwide corporation with absentee management and control [Jt. App. 197-198, 1121-1122], and Ehlers' superior wages and working conditions [Jt. App. 198-199, 404, 490].

Further, since the employees at Wilshire were required by the contract to be members of the Union, it would take an unusually brave and daring employee to undertake a decertification move against the very Union of which he was a member. Union pressures and intimidation against such an employee are commonplace. Further, the employee would make himself subject to union penalties. *Price v. NLRB*, 373 F. 2d 443 (9th Cir. 1967); *Tawas Tube Products, Inc.*, 151 NLRB 46 (1965); *cf. NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175 (1967). Finally the employee would run the risk of being discharged by his employer for such action. See *Midtown Service Co.*, 171 NLRB No. 161, 69 LRRM 1057 (1968).

At the hearing the Trial Examiner recognized the significance of the absence of any evidence that a single employee of Ehlers had expressed any desire for representation by the Unions [Jt. App. 322, 321].

The General Counsel did prove that most of the GM unit employees were members of one of the Unions or the other as of May 28, 1965 [Jt. App. 154-156]. Contrary to the assertion of the Unions in their brief (pp. 29-30), Ehlers denied the allegations of the complaint that the Unions were the designated bargaining agents for GM employees [Jt. App. 362, 347-348]. The fact that the GM employees were members of the Union up to May 28, 1965 is not evidence of their desire for union representation even in May of 1965, so *a fortiori*, it is not evidence of such desire in June. The critical fact here is that the GM union contract required membership [Jt. App. 589]. Obviously, where an employee has to be a member of the union in order to continue to work, his compulsory membership is not evidence of a desire to be represented by the union. Inasmuch as the employee must pay dues under the union shop clause, an assignment to have them checked off out of his pay is similarly no indication of a desire to continue to be represented by the union. Hence, neither the fact of continued membership nor dues check-off authorization under a union shop clause is any evidence of majority status. *Juvenile Mfg. Co.*, 117 NLRB 1513, 1531 (1957); *Randall Co.*, 133 NLRB 289, 295 n.16 (1961) ("where union membership is mandatory, dues check off authorizations are not probative evidence of a majority status at the time of the alleged refusal to bargain").

In any event, even if it be assumed that all of the GM unit employees desired continued representation by the Unions, substantially less than a majority of Ehler's unit employees had formerly been employed by GM, as discussed below.

Thus, there was a complete failure of proof that the Unions were the majority representatives of Ehlers' employees. Hence, as the Unions' bargaining agency status was not established, Ehlers was not guilty of a violation of Section 8(a)(5) by failing to bargain with the Unions.

III.

No Presumption Existed That the Unions Were the Bargaining Agents of Ehlers' Employees.

A. The NLRB Certifications Did Not Create Such a Presumption.

The Unions' assertion (pp. 25-28) that "the existence of valid certifications created a presumption of continued majority status" is unsound under the circumstances of this case. None of the cases cited lend a single iota of support to the Unions' position since *not a single one of them involved the situation of alleged successorship or even of seller and purchaser*. But even if we ignore this circumstance, the decisions do not sustain the Unions' contentions.

The cases of *Brooks v. NLRB*, 348 U.S. 96 (1954), *NLRB v. Warrensburg Board & Paper Corp.*, 340 F. 2d 920 (2nd Cir. 1965), and others cited involved the first year of certification during which the Board is precluded under Section 9(c)(3) [29 U.S.C.A. § 159(c)(3)] from holding a second election and during which the presumption of majority status is practically conclusive. Thus, concerning the language quoted therefrom by the Unions (p. 26), in the *Brooks* case the Court observed (p. 104):

"To be sure, what we have said has special pertinence only to the period during which a second election is impossible. . . . Furthermore, the Board has ruled that one year after certification the employer can ask for an election or, if he has a fair doubt about the Union's continued majority, he

may refuse to bargain further with it. This, too, is a matter appropriately determined by the Board's administrative authority."

Similarly, in the case of *Celanese Corp. of America*, 95 NLRB 664, 672 (1951), cited by the Unions (p. 28), the Board concluded:

"... A direct corollary of this proposition is that, after the certificate is a year old, as in cases where there is no certificate, the employer can, without violating the Act, refuse to bargain with a union on the ground that it doubts the union's majority, *provided* that the doubt is in *good faith*."

See also *NLRB v. Armato*, 199 F. 2d 800, 803 (7th Cir. 1952), a successorship case, immediately following the passage quoted by the Unions (p. 31).

It is recognized that under proper circumstances a true successorship gives rise to a presumption, based upon an NLRB certification, that the union that was bargaining agent under the predecessor continued to be majority representative of the successor's employees. But even assuming such a successorship here, no such presumption was created for the following reasons:

(1) The certifications were too ancient to have any continuing validity, a circumstance which the Trial Examiner acknowledged at the hearing as bothering him considerably [Jt. App. 322].

(2) The actual group of employees for whom the Unions were recognized by GM as bargaining representative was different from the certified units. See page 3, *supra*.

(3) The GM unit or units were not appropriate units for Ehlers' employees. See pages 2-3, *supra*.

(4) Similarly the GM certified units were in 1965 inappropriate under the then (and present) policies of the Board. See pages 2-3, *supra*.

(5) Finally, and perhaps most important, any presumption created by the certification would only apply to the multiplant unit which the certification covered and not to a portion only of such unit. *United States Molded Shapes*, 141 NLRB 357, 360 (1963) ("We do not think that any presumption of majority status, which the Union could claim among these employees as part of the no longer existing combined unit, continued to exist, when, in October 1961, the Union sought to represent them as a separate unit"). Cf. *American Concrete Pipe of Hawaii, Inc.*, 128 NLRB 720 (1960).

In *NLRB v. Richard W. Kaase Co.*, 346 F. 2d 24 (6th Cir. 1965) one employer of a certified multi-employer unit sold its business to Kaase who, 18 months after the certification, refused to bargain with the union. In holding that Kaase was not guilty of violating Section 8(a)(5) because of lack of evidence that the union in fact represented a majority of Kaase's employees (notwithstanding a closed shop contract), the court commented (p. 31):

" . . . In the present case, however, there is no evidence that at the time of the election or at any time thereafter Local 219 was in fact supported by the majority of Kaase's employees; the ambiguity inherent in the multi-employer election here relied on vitiates its efficacy to prove a majority as to any single employer."

The same logic applies to the situation here where the election was in a multiplant unit and the Unions now claim to represent the employees, on a theoretical majority, in a smaller segment of that unit. Moreover, unlike the *Kaase* case, or any other precedent, the majority of the employees at Wilshire in fact voted against union representation in the NLRB election [Jt. App. 1135-1137]. Under the foregoing circumstances, the NLRB certifications could hardly create a

presumption of majority status among Ehlers' Wilshire employees.

**B. The GM Union Contract Did Not Create a
Presumption of Continued Majority Status.**

At the hearing the General Counsel acknowledged that he was not relying on any presumption of continued majority status allegedly arising out of the GM union contract [Tr. 45]. The Unions cite no authority for its contention (pp. 29-30) that there is any such presumption. The single decision cited, *Mashara Construction Co.*, 171 NLRB No. 80, 68 LRRM 1120 (1968), was not a successorship case and merely applied the usual rule that an existing contract between the employer and a union of his employees is a bar to a representation petition. The Board did refuse to allow evidence that the union did not represent a majority of the employees when the contract was signed, which would have made the contract illegal under the Act. In doing so the Board merely applied its long established rule that it will not allow claims of an unfair labor practice to be litigated in a representation proceeding. And see *Herman Loewenstein, Inc.*, 75 NLRB 377 (1947) (seller's union contract no bar to representation petition involving purchaser's employees).

There is absolutely no precedent or authority for the amazing statement of the Unions (p. 30) that if an NLRB election had been held on a representation petition filed by Ehlers the GM employees on "strike" would have been entitled to vote in the election under Section 9(c)(3) of the Act [29 U.S.C.A. §159(c)(3)]! The Unions argued otherwise at the hearing [Tr. 109-112]. Furthermore, there was no evidence of any "strike" by GM employees, so Section 9(c)(3) would have no applicability. The evidence, by stipulation, was only to the effect that the Unions established a picket line around Ehlers' premises [Jt. App. 156-157].

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The actual implication of the Unions' argument is that the Unions represented GM's employees and therefore Ehlers had some vague, indefinite duty to bargain with such Unions even prior to the time that Ehlers became a successor unless it had a good faith doubt that the Unions represented GM's employees and filed a representation petition with the Board based upon such doubt. There is absolutely no authority, and the Unions cite none, for such a new far-fetched theory which, assuming it had any merit, would require an amendment of the Act. All of the cases cited by the Unions (pp. 25-30) involved the duty of an employer to bargain relative to his own employees and not relative to the employees of an employer whose business he hopes to purchase.

Thus, the Unions in effect claim that Ehlers had a duty to bargain concerning GM's employees, before Ehlers could possibly have become a successor, and even before Ehlers had a single employee! Under no theory could Ehlers have become a successor to GM prior to June 1, 1965 when Ehlers took possession and was issued a Cadillac franchise [Jt. App. 138, 140-141, 170, 526, 529, 539]. Under the buy and sell agreement of May 12th, the consummation of the transaction was conditional upon GM subsequently issuing a franchise to Ehlers [Jt. App. 441, 528]. And GM continued operating the business through May 28th [Jt. App. 143, 145, 170]. Prior to June 1st, it was GM that had the duty to bargain under the Act with the Unions. And it did in fact negotiate with the Unions over a period of several months about the termination of its retail business, resulting in a supplemental agreement [Jt. App. 958-974, 977-978, 1075-1083].

Ehlers could have a duty to bargain only when it had employees and then only with reference to such employees. Under Section 8(a)(5) of the Act it is an

unfair labor practice for an employer to refuse to bargain only with the representative "of his employees." The Act actually makes it illegal for an employer to enter into an agreement with a union before it has employees. *Frick Co.*, 141 NLRB 1204 (1963). Subsection (f) was added to Section 8 of the Act by the Labor-Management Reporting and Disclosure Act of 1959, the so-called Landrum-Griffin Act [29 U.S.C.A. §158(f)], to make such pre-hire agreements legal—but only in the building and construction industry!

Under all the circumstances present in this case there was never any presumption of majority status created affecting any duty of Ehlers.

IV.

Any Presumption That the GM Unions Became the Majority Representatives of Ehlers' Employees Was Conclusively Rebutted.

To return to established and accepted doctrines and legal principles actually applicable to this case, even assuming that Ehlers was a successor to GM and further assuming that there was a presumption that the Unions were the majority representatives of Ehlers' employees, the facts establish beyond question that such presumption was effectively rebutted. It is not disputed that such a presumption is rebuttable. As observed in *NLRB v. Richard W. Kaase Co.*, 346 F. 2d 24, 31 (6th Cir. 1965):

" . . . to overcome the presumption of majority the employer need only produce sufficient evidence to cast serious doubts on the union's continued majority status. The presumption then loses its force and the General Counsel must come forward with *evidence* that on the refusal-to-bargain date the union in fact did represent a majority of employees in the unit."

Cf. International Union, UAW v. NLRB, 394 F. 2d 757, 763 (D.C. Cir. 1968) ("Certainly the burden does not rest with the Company to show a lack of majority").

We have discussed above (pages 13-15) some of the evidence which, we submit, requires a finding that a majority of Ehlers' employees did not desire representation by the Unions. However, it is not necessary to make such a finding to conclude that the presumption has been rebutted. All that is needed is evidence that casts serious doubts on majority status of the Unions. Certainly, the evidence in this record at least does that, so that any presumption of continued representation by the Unions of Ehlers' employees has been overcome. Thus, there was not in this case any presumption of majority representation which could substitute for proof that a majority of Ehlers' employees desired representation by the Unions.

V.

Ehlers Was Not a Successor to GM.

On the basis of the foregoing, even if Ehlers could be considered a successor to GM, it had no duty to bargain with the Unions. Further, it had no such duty because it was not actually a successor to GM, as the Board held.

A. All the Facts Establish That the GM "Employing Industry" Was Not Continued by Ehlers.

The following circumstances clearly establish that Ehlers was not a successor to GM, or to its Cadillac Motor Car Division, or to the Los Angeles retail branch of Cadillac, or to its Wilshire sub-branch.

(1) The NLRB certifications of the Unions and the GM Union contract were on a multiplant basis, that is, covering the shop employees at both Wilshire and Bixel as a single group [Jt. App. 1099-1100, 1112-

1113]. (2) The Union contract provided for seniority based on length of service at both Bixel and Wilshire [Jt. App. 599, 602]. (3) The agreement was patterned to some extent upon GM's national agreement with the United Automobile Workers [Jt. App. 1013-1018, 1022]. (4) Thereunder, in some situations seniority accrued while working at other GM facilities [Jt. App. 607]. (5) The holiday pay, vacation pay, and paid absence benefits and eligibility were based on length of employment in any GM facility [Jt. App. 612-613, 620, 623, 624]. (6) The 278 page contract included the GM national hourly pension plan, insurance program, and income security plan, under which eligibility and benefits were based on length of service with GM anywhere [G.C. Exhs. 6-D, 6-E, 6-F, 6-K, 6-L, 6-M].

(7) The Wilshire operation was not self-sufficient, but was integrated with the Los Angeles retail branch operations at Bixel and Vermont [Jt. App. 206-221, 225-233, 297-300, 309, 311, 316, 438-439, 577, 580, 940-941, 1123].³ (8) It was but a sub-branch of the main Bixel location which was the primary operation of the Los Angeles retail branch [Jt. App. 299]. (9) The branch manager, controller, used car manager, personnel manager, credit manager, and other management personnel were located at Bixel [Jt. App. 206, 209-211, 216]. The accounting, personnel, and other functions were centralized at Bixel for all three locations, and the Bixel shop was the dominant shop [Jt. App.

³The Union (pp. 11-12) distorts the facts in claiming Wilshire was self-sufficient. Thus, Toombs' testimony was that "at times" there was an interchange of employees between Bixel and Wilshire and Graham testified that Bixel employees filled in for Wilshire shop employees "quite often" [Jt. App. 211, 299]. Further, the building maintenance at Wilshire was done by employees from Bixel [Jt. App. 212, 228-230]. Separate payrolls were not kept at Wilshire [Jt. App. 212, 226]. Wilshire was not equipped, as was Bixel, to do upholstery work, all used cars from Wilshire were reconditioned at Bixel, etc. [Jt. App. 297, 311].

206-207, 212-213, 216, 226]. (10) The Los Angeles retail branch, moreover, was subject to direction and control from Detroit [Jt. App. 209, 217-219]. (11) This was particularly true in the critical area of labor relations [Jt. App. 636, 937, 941, 948, 951, 953, 970-974, 989-991, 1075, 1123-1124]. (12) A number of the Los Angeles retail branch managers and executives were in fact on a GM Detroit payroll [Jt. App. 213].

(13) GM advised the Unions in mid January, 1965 of the possibility it might discontinue its Los Angeles retail branch operations and over several months discussed and bargained with the Unions about this eventuality [Jt. App. 958-979, 1075-1083]. (14) These negotiations resulted in the Supplemental Agreement of April 28, 1965 which made provision, in anticipation of the closing of the Los Angeles retail branch, for employees to be voluntarily laid off out of line of seniority in order to take another job prior to the actual discontinuance of operations [Jt. App. 640-641, 973-974, 978-979].

(15) GM notified all its Los Angeles retail branch employees (except those who went to work for some other GM facility) that they were terminated as of the end of Friday, May 28, 1965. Ehlers did not request, or suggest to, GM to so terminate its employees. GM did cease operations at the close of business May 28, 1965 [Jt. App. 143, 145, 153-154, 156, 161, 168, 170, 431, 974-975, 995]. (16) Pursuant to its discussions with the Unions, GM paid its shop employees vacation and absence pay prorated to the end of May [Jt. App. 426-427]. (17) Further, 31 out of 42 GM unit employees at Wilshire elected to receive immediately payment of their accumulations (in amounts up to \$1380) under the GM income security plan, which is payable in a lump sum only on final termination from all GM employment [Jt. App. 1127, 1130]. (18) Final-

ly, 11 in the Wilshire unit were retired as of the end of May under the GM pension plan, including a number who were allowed to be so retired though they had not yet reached the minimum retirement age of 60 [Jt. App. 300-301, 999, 1127, 1129].

(19) Pursuant to its buy and sell agreement of May 12, 1965, on June 1, 1965, Ehlers entered into a sublease from GM of its Wilshire premises. This sublease, however, did not cover the entire term under GM's lease with its lessor [Jt. App. 167-168, 440, 529]. (20) Ehlers' sublease covered but 28.2 percent of the premises used by GM in its Los Angeles retail branch operation [Jt. App. 190, 221-222, 313-314, 1120]. (21) Ehlers also purchased from GM for cash a number of the physical assets located at Wilshire, including furniture, fixtures, machinery, shop equipment, service cars, and special tools (capital items) for a price of \$28,000, and miscellaneous inventory items for \$20,139, the total being \$48,139 [Jt. App. 1115]. The foregoing does not include the new Cadillacs and Cadillac parts and accessories acquired, which any dealer must acquire and therefore has no significance [Jt. App. 163, 166, 183, 538], or the less than one week's acquisition of used cars [Jt. App. 166, 1127].

(22) Because of the unsatisfactory condition of the Wilshire premises, Ehlers immediately undertook a major renovation program at a cost of \$75,000 [Jt. App. 164]. (23) In addition, Ehlers had to immediately expend for additional equipment, furniture, non-factory inventory items, etc., the sum of \$71,200 [Jt. App. 164-166]. (24) These additional purchases and expenditures by Ehlers, totaling \$146,200, were more than three times greater than its \$48,139 in similar purchases from GM. Thus, Ehlers' purchases from GM constituted less than one-third of its immediate requirements. (25) Ehlers' purchases from GM did not include

any of the assets of GM used by it at Bixel or in connection with its Vermont used car lot [Jt. App. 169]. (26) Hence, Ehlers acquired physical premises (by sublease) and assets amounting to less than one-third of those used by GM in its Los Angeles retail operation and the Assets purchased from GM amounted to less than one-third of Ehlers' needs. In sum, Ehlers' purchases from GM represented less than one-sixth of the total of all the Los Angeles retail branch assets plus Ehlers' other purchases and immediate expenditures, and the leased premises constituted just over one-fourth of the total GM Los Angeles retail branch premises.

(27) Ehlers did not purchase from GM any of its real property, non-trade accounts receivable, goodwill, customer lists, permits, licenses, trademarks, files, records, etc. [Jt. App. 147-150, 163, 499, 1127]. (28) Ehlers did not acquire any of the monetary liabilities of GM's Los Angeles retail branch, amounting to many thousands of dollars [Jt. App. 1127-1129], nor did it assume any of the other obligations of GM, including its Union contract [Jt. App. 148, 168, 499].

(29) The transaction between GM and Ehlers was a bona fide arm's length undertaking.

(30) As Ehlers had discovered that the Wilshire shop service had been most unsatisfactory, Ehlers determined it would not hire the GM work force intact, and it would recruit only the most qualified people, including those with the most diversified skills for the shop [Jt. App. 170, 189, 198-199, 479-481, 503-504, 507-513, 805-806]. (31) Accordingly, it hired the shop employees from every available source, including all of those employed by GM who had been recommended by GM shop supervisors, solely on the basis of skill and ability. Such selection was not influenced in any way by union membership [Jt. App. 806]. (32) Out of

necessity, because of lack of time, Ehlers was compelled to hire most of its salaried employees from the former GM Wilshire employees on a probationary basis until it could determine which ones were qualified to be retained [Jt. App. 171-172, 193-194]. (33) All employees hired by Ehlers, including former GM employees, made written applications for hire on Ehlers' form [Jt. App. 169].

(34) Ehlers commenced operations on Tuesday, June 1, 1965, pursuant to a Cadillac dealer's franchise issued by GM on that date [Jt. App. 140-141, 161]. (35) Ehlers is a separate business distinct from GM. Thus, it had its own licenses, deposits, bonds, etc. [Jt. App. 174-175, 317-318]. (36) Ehlers did not take over any of the contracts GM had with vendors of materials or service [Jt. App. 314-315]. (37) Ehlers' vendors of services and materials are different from those used by GM [Jt. App. 186-188, 227, 318-319, 1126]. (38) Ehlers maintains relations with banks, accountants, doctors, attorneys, insurance consultants, etc., different from those used by GM [Jt. App. 186, 204, 1125-1126].

(39) Ehlers was required to pay a sales tax on the capital items purchased from GM because the transfer was not between related parties [Jt. App. 1115]. (40) Ehlers was not allowed to take advantage of GM's lower unemployment insurance tax rate which it enjoyed because of its favorable experience [Jt. App. 175-176, 1126]. (41) Payroll taxes paid by Ehlers or withheld from employee wages were computed (relative to the maximum annual taxable wage) without regard to prior earnings with GM [Jt. App. 176-177]. (42) Ehlers' workmen's compensation insurance rate was not based on GM's experience but on Lou Ehlers' Milwaukee experience [Jt. App. 181, 263].

(43) Ehlers' management, which included Lou Ehlers and two top managers who were with Ehlers in Milwaukee, was completely different from that of GM [Jt. App. 182, 317, 423-424, 449, 573]. (44) Similarly, Ehlers' supervisors of shop employees were substantially different from those of GM [Jt. App. 451, 573, 714-715]. (45) In June of 1965, Ehlers had 87 employees, compared to 279 employed by GM in its Los Angeles branch. Fifty-four of those had formerly been employed by GM [Jt. App. 180-181, 1119, 1121]. (46) Ehlers then had 35 unit employees, compared to 117 in GM's unit. Eleven of these had formerly been employed by GM [Jt. App. 1119, 1121]. These 11 constituted about 10 percent of the GM unit employees, about 25 percent of the 42 GM unit employees at Wilshire, and 31 percent of Ehlers' unit employees. (47) By November of 1965, Ehlers had 93 employees, only 36 of whom had formerly been employed by GM, including 9 (or 23 percent) in Ehlers' unit of 40 [Jt. App. 1119].

(48) Ehlers established its own salaries, wages, hours, and terms and conditions of employment which were different from and unrelated to those of GM and which were better than those found in most local automotive shops [Jt. App. 186-189, 198-199, 301-302, 400, 404, 406-407, 467, 478-479, 482, 485-490, 565-570, 608-633; G.C. Exh. 6-L].

(49) Ehlers required diversified skills among its mechanics instead of the specialization practiced under GM [Jt. App. 310-311, 395-396, 413, 479-481]. (50) Ehlers had its janitorial work performed by its own employees. GM used a maintenance service [Jt. App. 403, 473, 1126]. (51) Similarly, Ehlers did not use a guard service, such as GM did [Jt. App. 184, 296, 1126]. (52) Ehlers did not use pickup and delivery men, such as were included in GM's unit [Jt. App. 145, 319-320, 398-399, 372]. (53) Ehlers subcontracted

some of its body work while GM did not [Jt. App. 296-297]. (54) Ehlers did not have available employees from Bixel, as did GM, for Wilshire building maintenance work or filling in for Wilshire absentees [Jt. App. 211-212, 228-230, 299]. (55) Ehlers did not have the Bixel shop for reconditioning of the Wilshire used cars, as did GM [Jt. App. 297]. (56) Ehlers did not have the Bixel shop to which it could send its overflow shop work, as did GM [Jt. App. 298-299, 309].

(57) GM was (and is) the world's largest corporation. Ehlers is a small local family corporation [Jt. App. 161, 180, 427, 442-445, 935-936; Ehlers' Exh. 7]. (58) GM was (and is) engaged in business nationwide. Ehlers is engaged in business solely in Los Angeles [Jt. App. 177, 906]. (59) GM had a number of facilities and operations in Los Angeles. Ehlers' only business is at Wilshire [Jt. App. 183, 312-313, 972; Ehlers' Exh. 8]. (60) Ehlers' operation is controlled and directed in Los Angeles and not from Bixel and/or Detroit as was true in the case of GM.

(61) GM was (and is) primarily a manufacturer of automobiles; its Cadillac Motor Car Division was (and is) engaged solely in the manufacture of Cadillacs, including parts and accessories. Ehlers does no manufacturing [Jt. App. 183, 935]. (62) GM did sell its own new Cadillacs at retail through its Los Angeles branch. Ehlers, however, is engaged in the purchase of Cadillacs from GM and the resale of them at retail [Jt. App. 197, 960]. (63) As a purchaser of Cadillacs from GM for resale, Ehlers has to finance such purchases [Jt. App. 197]. (64) GM, as a manufacturer, was not in competition with the local franchised dealers in the sale of Cadillacs or dependent upon a retailer's profit. Ehlers is an independent dealer and is in competition with the other 15 franchised Cadillac dealers in the area and

dependent solely on a retailer's profit [Jt. App. 140-142, 178-180, 184, 219, 1118]. (65) GM arranged for customer financing of purchases principally through its G.M.A.C. affiliate. Ehlers used local banks for such purposes [Jt. App. 183-184, 314].

(66) Because of its reliance solely on a retailer's profits, Ehlers' sales program and activity (including service sales) are necessarily more intensive than were GM's sales program [Tr. 152-162, 197-198, 430]. (67) GM did not lease new Cadillacs. Ehlers' business includes the leasing of Cadillacs [Jt. App. 160]. (68) In the sale of used cars, because of its limited space and quantity of cars available, Ehlers is required to make more sales at wholesale and at lesser profit than was true of GM [Jt. App. 177-178, 225]. (69) GM as a manufacture, that could not compete with its own franchised dealers, maintained service facilities as an accommodation to Cadillac purchasers. Ehlers must furnish such services as a source of profit. (70) Ehlers must also render superior Cadillac repair services as a prime source of new car customers [Jt. App. 173]. (71) Many of Ehlers' operational practices and procedures, including those in the shop, are significantly different from those of GM [Jt. App. 301-302, 310-311, 395-397, 401-402, 414-416, 469-474, 479-485, 489, 495-496].

(72) Ehlers is independent of GM and its only relationship with GM is that of a sublessee and a Cadillac franchised dealer [Jt. App. 162, 399]. (73) Similarly, Ehlers has no connection with Thomas, except that of a competitor, and its purchases and arrangements with GM were made completely independent of Thomas [Jt. App. 161-162, 224-225, 301, 425-434].

The net effect of all the above is that Lou Ehlers Cadillac bears little resemblance to the GM business that previously was operated in part from the same

location. Granted that GM also sold (but not resold or leased) new Cadillacs, parts, and accessories, sold used cars, and serviced Cadillacs, with reference to each of these functions and operations the business of Ehlers is conducted substantially different, and for the most part, with different personnel, from the business of GM. It is difficult to understand how Ehlers could be considered a successor to GM. Certainly it has no resemblance to that huge corporation or its Cadillac manufacturing division.

However, in view of the integration of the GM Wilshire (and Bixel) operations with GM's headquarters in Detroit, and particularly with reference to the vital matter of labor policy determination and administration, the employing industry was GM, or, at least, GM's Cadillac Motor Car Division, and not the Los Angeles retail branch. It was from GM (and not its Los Angeles Cadillac retail branch) that Ehlers leased the Wilshire premises, that Ehlers purchased some of the assets used by GM at its Wilshire location, and that Ehlers obtained its franchise to operate as a retail Cadillac dealer. In connection with this latter point, any control that the Unions assume existed over Ehlers by reason of the franchise was in GM's Detroit headquarters and was not, therefore, derived from any claimed Wilshire-Bixel employing industry. Thus, we submit, that the employing industry was GM, and not its Los Angeles Cadillac retail branch, and it is not disputed that Ehlers was not a successor to GM or to its Cadillac Motor Car Division.

But even if the employing industry was considered to be the Los Angeles retail branch of GM's Cadillac Motor Car Division, it is still not possible to find a successorship by Ehlers. Ehlers undertook use of but a small part of that branch's facilities and but relatively few of its employees. The Unions want us to look solely at the Wilshire location for similarity. This is

improper since the GM Union contract covered both Bixel and Wilshire as a single unit and because the GM Wilshire sub-branch was not a complete operation. In connection with the Wilshire business, ample use was made by GM of its Vermont and Bixel facilities and employees. Ehlers is, of course, a self-sufficient business conducted solely at the Wilshire location. It performs all the operations and functions, with its own personnel, which under GM were performed for Wilshire in part at Vermont or Bixel and with the employees at such locations. But even if we close our eyes to this fundamental difference between GM and Ehlers, it is still true that the management, supervision, employees, terms and conditions of employment, facilities, policies, practices, and procedures are, under Ehlers, so dissimilar to those under GM at Wilshire, as is the basic nature of the business of an independent dealer, that a successorship relationship is inconceivable.

Two members of the Board (Jenkins and Fanning) were of the view that under the totality of the circumstances Ehlers was not a successor to GM or any of its operations. The other two members (chairman McCulloch and Zagoria), without expressing any view about the significance of the other circumstances, ruled that Ehlers was not a successor to GM because it did not employ a significant number of former GM service employees and its supervisory hierarchy bore little resemblance to that formerly existing under GM. In any event, the Board properly held, unanimously, that Ehlers was not a successor to GM.

B. The Board's Decision Is Supported by
All Precedents.

1. Totality of Circumstances.

Considering all of the circumstances discussed above, all of the applicable precedents require a holding that Ehlers was not a successor to GM. *Piasecki Aircraft Corp. v. NLRB*, 280 F. 2d 575 (3rd Cir. 1960) *cert. den.* 364 U.S. 933 (1961); *NLRB v. Alamo White Truck Service, Inc.*, 273 F. 2d 238 (5th Cir. 1959); *Northwest Galvanizing Co.*, 168 NLRB No. 6, 66 LRRM 1244 (1967); *Federal Elec. Corp.*, 167 NLRB No. 63, 66 LRRM 1089 (1967); *Apex Record Corp.*, 162 NLRB No. 31, 64 LRRM 1044 (1966); *San Francisco Metal Products Co.*, 155 NLRB 236 (1965); *Triumph Sales, Inc.*, 154 NLRB 916 (1965); *Union Texas Petroleum*, 153 NLRB 849 (1965); *Tennsco Corp.*, 141 NLRB 296 (1963) *enf. den.* 339 F. 2d 396 (6th Cir. 1964). We know of no court or Board decision that would support a contrary holding.

The decisions cited by the Unions (pp. 31-46) are not applicable. None of the NLRA Supreme Court cases cited even involved purchasers. The cases of *Martin White, Jr.*, 165 NLRB No. 81, 65 LRRM 1491 (1967) and *NLRB v. Colten*, 105 F. 2d 179 (6th Cir. 1939) were not really successorship cases. The cases of *Perma Vinyl Corp.*, 164 NLRB No. 119, 65 LRRM 1168 (1967) *enfd* 68 LRRM 2913 (5th Cir. 1968) (not yet officially reported) and *NLRB v. Tempest Shirt Mfg. Co.*, 285 F. 2d 1 (5th Cir. 1960) did not involve the duty to bargain. Most of the others arose during the first year of certification (see pages 16-17 *supra*) and all are otherwise clearly distinguishable. For example, in *Randolph Rubber Co.*, 152 NLRB 496 (1965) the union, to the purchaser's knowledge, had obtained union cards from a large majority of the purchaser's employees as of the date of the Section 8(a)(5) finding.

The Unions' reliance on *John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543 (1964) and other cases under Section 301(a) of the Labor-Management Relations Act of 1947 [29 U.S.C.A. §185(a)] is misplaced. Those cases did not involve a question of majority representation and the duty to bargain based thereon, but the enforceability of an arbitration clause pursuant to the national policy under Section 301(a) favoring arbitration. In *Wiley* the Court specifically observed that (p. 551), "we do not suggest any view on the questions surrounding a certified union's claim to continued representative status following a change in ownership."

The limited holding of *Wiley* and its inapplicability to representation questions have been noted in a number of decisions, including those of this Court. See *Wheeler v. NLRB*, 382 F. 2d 172, 175-176 (D.C. Cir. 1967); *National Ass'n of Broadcast Employees v. FCC*, 346 F. 2d 839, 841-842 (D.C. Cir. 1965); *Southern Conference of Teamsters v. Red Ball Motor Freight, Inc.*, 374 F. 2d 932, 939-940 (5th Cir. 1967) (denying arbitration in merger situation).

The cases of *Wackenhut Corp. v. International Union, United Plant Guard Workers*, 332 F. 2d 954 (9th Cir. 1964) and *United Steelworkers of America v. Reliance Universal Inc. of Ohio*, 335 F. 2d 891 (3rd Cir. 1964) similarly did not involve any issue of the representation rights of the unions—that they were the bargaining agents was not disputed. Further, the purchasers in each case were unquestionably successors under the N.L.R.A., there being absolutely no change resulting from the sales other than a change in ownership. On the other hand, under other circumstances a purchaser is not bound by the arbitration clause in the seller's union contract. *McGuire v. Humble Oil & Ref. Co.*, 355 F. 2d 352 (2nd Cir. 1966) *cert. den.* 384 U.S. 988 (1966); *Drivers, Warehouse & Dairy*

Employees Union Local 75 v. Wisconsin Emp. Rel. Bd., 59 LRRM 2885 (Cir. Ct. 1965) *aff'd* 29 Wisc. 2d 272, 138 N.W. 2d 180 (1965) *cert. den.* 384 U.S. 906 (1966).

The fact is that a purchaser who may be a "successor" for purposes of enforcing an arbitration clause under Section 301 is not necessarily a "successor" for bargaining purposes under the N.L.R.A. This is illustrated by the *Wiley* case itself. Wiley was not a successor to Interscience under the N.L.R.A. Unquestionably, the union therein did not become bargaining agent for Wiley's employees and it did not claim otherwise. In many of the decisions relied on by Ehlers in this brief, the seller's union contract was in effect at the time of the sale, and yet there was no duty of the purchaser to bargain. On the other hand, a purchaser who is not a successor under Section 301 could not possibly be a successor under the N.L.R.A.

This leads us to the most significant precedent under Section 301. In *Cooksey v. Lou Ehlers Cadillac*, 63 LRRM 2425 (Calif. Supr. Ct., June 30, 1966), it was held, on substantially the same record as in the instant proceeding [Jt. App. 99], in an action brought by the Unions, that Ehlers was not a successor to GM and accordingly the arbitration clause in the GM 1964 contract with the Unions was not binding on Ehlers, or enforceable against it under Section 301 [Jt. App. 97-128]. The Court specifically found [Jt. App. 125-126] that Ehlers "was not at any time and is not now a successor to G.M., or to its Los Angeles branch, or to its Wilshire location or operation."

The above decision must be the single most significant and persuasive Section 301 precedent. But more than that, we submit that under the doctrine of collateral estoppel the Unions, being bound by that decision, may not challenge the similar ruling of the Labor Board by their petition herein.

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2. Special Circumstances.

Aside from the totality of the circumstances, there are a number of special circumstances which preclude a finding that Ehlers was a successor to GM, a few of which we will discuss separately.

(a) BIFURCATION OF UNIT. In view of the facts that Wilshire was not a self-sufficient operation under GM, requiring the functions and personnel of the Bixel headquarters, that Wilshire and Bixel were combined in a single unit under the NLRB certifications and the GM contract, and that Wilshire was the smaller part of the GM retail operation (36 percent of the unit employees were employed at Wilshire), it is submitted that Ehlers may not be considered to be a successor to any part of GM's business. Thus, in *NLRB v. Downtown Bakery Corp.*, 330 F. 2d 921 (6th Cir. 1964), Downtown purchased one bakery of a multi-employer certified unit of four bakeries. The court, in holding that Downtown did not violate Section 8(a) (5) by refusing to recognize the union, commented (p. 926), "it may be concluded that the dissolution of the multiemployer unit of which Smayda employees composed a relatively small segment will serve as reasonable grounds for the belief that the union had lost its majority status among those employees." Similarly applicable are *United States Molded Shapes*, 141 NLRB 357 (1963) (purchase of a single plant of seller's multiplant operation); *American Concrete Pipe of Hawaii, Inc.*, 128 NLRB 720 (1960) (purchase of a single department); see also *NLRB v. Richard W. Kaase Co.*, 346 F. 2d 24 (6th Cir. 1965), *cf. Retail Store Employees Union, Local 954 v. Lane's of Findlay, Inc.*, 260 F. Supp. 655 (N.D. Ohio 1966) (purchase of one of a chain of drug stores; arbitration denied).

On the basis of the above decisions, under the circumstances here present, since Ehlers purchased less

than all of the operations covered by the GM certifications and union contract, Ehlers was not a successor to GM or any part of its business.

The Trial Examiner recognized the impossibility of finding Ehlers to be a successor under such circumstances and established Board law. Hence, he devised a novel, but equally untenable, theory. Thus, he found that the appropriate unit was a single multi-employer unit of Ehlers' and Thomas' employees and Ehlers and Thomas had the duty to bargain jointly [Jt. App. 38, 46]. Yet, such a finding is contrary to all accepted law requiring voluntarism for establishment and continuance of a multi-employer unit. *Western States Regional Council No. 3, Int'l Woodworkers of America v. NLRB*, 398 F. 2d 770 (D.C. Cir. 1968); *Evening News Ass'n*, 154 NLRB 1494 (1965) *enf'd* 372 F. 2d 569 (6th Cir. 1967). But even more important, such a finding was contrary to the allegations of the complaint that the appropriate unit was a single employer unit of Ehlers' employees [Jt. App. 348]. Further, it was contrary to the position of all the parties [Jt. App. 137-138, 321-322] and was not litigated. As the Trial Examiner observed at the hearing, "Nobody believes a multi-employer unit would be appropriate in this case after successorship" [Jt. App. 322], and the Unions do not make any such claim before this Court.

(b) LOCAL BUSINESS. There is an additional fundamental difference which makes the finding of a successorship by Ehlers impossible. Here the seller was a huge, nationwide manufacturer and the purchaser was a small, local, independent retail dealer, with different ownership and management. Certainly it is true that the feelings and desires of employees are affected by whether their employer is a small, local, independent organization or an impersonal, nationwide colossus [Jt. App. 1121-1122]. Such a difference is incompatible

with the concept of successorship. Cf. *Apex Record Corp.*, 162 NLRB No. 31, 64 LRRM 1044 (1966).

A controlling decision in this respect is *NLRB v. Alamo White Truck Service, Inc.*, 273 F. 2d 238 (5th Cir. 1959). Under identical circumstances in this regard, the court held that Alamo was not a successor employer and had no duty to recognize or bargain with the unions. The court concluded (p. 242):

“We regard the employee-employer relationship as a most important element in determining whether there is sufficient continuity between two employing enterprises to justify enforcing an NLRB order against a company that was not a party to the original proceeding that generated the certification. The employee-employer relationship in the operation of Alamo was materially different from the employee-employer relationship in White Motor Company, not just because of a difference in the number of employees or in the turnover, but because the interaction of the employee group with the management of Alamo was completely changed. We mean by this, the difference between the close personal relationship of management and workers characteristic of a small, local business, existing in this case as the record shows, and the disembodied relationship of workers to top management not uncharacteristic of a large corporation when branch workers must accept policies fixed by some far-off head office. . . .”

The instant case cannot be distinguished from the *Alamo* case in this respect.

In *NLRB v. Aluminum Tubular Corp.*, 299 F. 2d 595, 599 (2nd Cir. 1962) where there was the converse situation, “the absorption of a new and smaller business into an older and larger one”, it was held, “just

as much as in the *Alamo* case, there has been a "distinct change in the employer-employee relationship" so that the acquiring company was found not obligated to bargain with the union certified as representative of the employees at the former smaller business. In both the *Aluminum Tubular Corp.* and the *Alamo* cases the results were reached notwithstanding the fact that the acquisitions occurred during the first year of the NLRB certification. See also *Alabama Precast Products Co.*, 163 NLRB No. 99, 65 LRRM 1041 (1967) where one of the elements which the Board found to justify a purchaser's good faith doubt of the majority status of the union was the fact that the purchaser was a small, local enterprise which acquired a single plant of a nationwide concern.

So in the instant case this basic difference between GM and a small, local independent business requires a finding that Ehlers was not a successor.

(c) EMPLOYEE COMPLEMENT. A basic fact here is that Ehlers' complement of employees included only 11, out of its 35 shop employees, who were formerly employed by GM. These 11 constituted only 31 percent of Ehlers' shop employees, only 9 percent of GM's unit employees, and only 26 percent of GM's Wilshire unit employees. Thus, Ehlers' employees as a group had relatively little connection with GM. The work force was essentially Ehlers, not GM. This too must preclude a finding of successorship.

Directly in point, and the decision which is most comparable to the instant situation (except, possibly, for the *Alamo* case), is the decision in *NLRB v. John Stepp's Friendly Ford, Inc.*, 338 F. 2d 833 (9th Cir. 1964). Stepp purchased the assets of Westward Motors Ford, which had a union contract in effect covering its salesmen. Stepp then began operations under a Ford franchise. At that time it had 30 employees, of

which 21 (or 70%) had been hired from Westward, including four department managers and a foreman. Westward had had 12 salesmen. Stepp hired three of these (25%) and with five others operated with a force of eight salesmen. The court held that since almost two-thirds of Stepp's salesmen had no prior connection with Westward, it was not a successor to Westward and was not obligated to bargain with the union.

The present case is even a stronger one for recognizing that there was no successorship. It should be noted that the *Stepp's* decision was rendered after the *Wiley* decision and after the Ninth Circuit's own *Wackenhut* decision. And in the *Wiley* case all the employees of Interscience became employees of the merged corporation, a fact which the Supreme Court considered as basic (376 U.S. at 551).

Whether or not an alleged successor does take over the work force of the seller, and particularly whether or not it hires the unit employees, has always been and still is a vital—perhaps the most important—consideration in determining successorship. *Piasecki Aircraft Corp. v. NLRB*, 280 F. 2d 575 (3rd Cir. 1960) *cert. den.* 364 U.S. 933 (1961). In finding a successorship in *Johnson Ready Mix Co.*, 142 NLRB 437, 441 (1963) the Board noted that, “*most significantly, a majority of the employees in the unit we have found appropriate were formerly Missouri employees*” (emphasis added). In each of the seven cases cited by the Unions (pp. 31-34, 37-39, 42) where it was held that a purchaser was a successor with a duty to bargain, the majority of the purchaser's unit employees had formerly worked for the seller and apparently in all the purchaser hired a majority of the seller's employees and in most the work force of the purchaser, including supervision, was practically identical to that of the seller. (The *Chemrock* and *Young* cases are discussed

below.) It is also true that in *International Chemical Workers Union v. NLRB*, 395 F. 2d 639, 641 n. 1 (D.C. Cir. 1968), in which this Court recently sustained a Board finding of successorship, "the labor force was continued intact, the plant supervisory officials were unchanged."

Whether or not the purchaser's complement of workers includes many who were formerly employed by the seller must be a primary consideration. It is not a building, a machine, the manufacturing industry, the wholesale industry, the retail industry, etc., that is involved, but the *employing* industry. It is the employment relationship with which we are concerned. This must be the rule since the doctrine of successorship is justified solely on the basis that it may reasonably be assumed that the successor's employees desire to be represented by the seller's union. (See *International Chemical Workers, supra* at 640.) Such an assumption may not under any circumstances properly be made unless the purchaser has hired most, or at least, a majority of the seller's unit employees.

C. Ehlers Only Duty to GM Employees Was Not to Discriminate Against Them.

The Unions seek to overcome the force of the above principles and authorities by apparently arguing that Ehlers had a duty under the Act to hire all the GM shop employees it needed for its work force or that Ehlers at least had a duty to bargain with the GM Unions as to which of the GM employees it would hire.

Considering the latter contention first, the complaint contained no allegation that Ehlers had a duty to bargain with the Unions concerning GM's employees. Moreover, there is absolutely no precedent supporting such a claim and the entire concept of the duty to bargain under the N.L.R.A. would have to be changed to embrace such a concept.

The Unions purport to rely on the case of *Chemrock Corp.*, 151 NLRB 1074 (1965) to support its argument. That split decision of the Board is clearly distinguishable. Chemrock was indisputably a successor. It took over the operations of the seller lock, stock, and barrel, including the employees and supervision, without change and recognized the Machinists, which represented the production and maintenance employees of the seller, as bargaining agent. The Company had also planned on hiring the seller's five truck drivers, represented by the Teamsters, as a group. Only when those drivers insisted that Chemrock accept their union contract and deal through their Teamster representatives did the company refuse to hire them. The decision was limited solely to (p. 1080, n. 8) "circumstances such as those described above."

In the instant case, Ehlers had no plans to hire the GM work force intact nor did a single employee of GM indicate he wanted the Unions' contract to be continued in effect or the Unions to continue to be their bargaining agent. Thus, the unique situation present in *Chemrock* is not found in this case. Therefore, the Union's claim (p. 45) that the instant decision "reverses *Chemrock* without explanation" is without foundation. Actually, the limited application of *Chemrock* was demonstrated by the Board decisions subsequent thereto wherein it held there was no successorship, one of the considerations being the fact that the purchaser had not hired a majority of the seller's employees. See cases, *supra*, page 33.

It certainly is elementary that Ehlers could not have a duty to bargain before it had employees or with reference to GM employees while GM had a duty to bargain with respect to such employees. See pages 20-21, *supra*. Nothing in *Wiley* supports a contrary position.

Regarding proper protection of the interests of the GM employees, the Unions (p. 36) read too much into the Supreme Court's *dictum*, at 549. The Court was there actually concerned with "a duty to arbitrate previously established" and the Court cautioned that its opinion had no application to the duty to bargain. The inapplicability of such *dictum* to the instant situation is demonstrated by the later case of *Textile Workers Union of America v. Darlington Mfg. Co.*, 380 U.S. 263 (1965). Notwithstanding the *dictum* in *Wiley* that the rightful prerogative of owners to "even eliminate themselves as employers" should be balanced by "some protection to the employees from a sudden change in the employment relationship", the Court held that the N.L.R.A. did not limit an employer's absolute right to discontinue its entire business or, for nondiscriminatory reasons, a part thereof. No protection to the employees relative to their jobs was provided by the N.L.R.A. This decision, which was under the N.L.R.A., whereas *Wiley* was under Section 301(a) of the Taft-Hartley Act, is directly contrary to the *Wiley dictum*.

Nor is the position of the Unions necessary to protect any legitimate interests. The Unions undoubtedly have an intense desire to be bargaining agents of Ehlers' employees, but they have no proper right to be unless they actually represent a majority of Ehlers' employees. The employees of Ehlers have a protectible interest in the right to select their own bargaining agent, or to have none. Ehlers had a protectible interest in the right to hire the employees it deems satisfactory to make its investment secure.

The interests of the GM employees finds its protection under the N.L.R.A. in the duty of GM to bargain collectively, even about termination of its retail business and the effects thereof on the employees. If GM merely had discontinued its retail business without franchising additional dealers in the area, GM's employees

would have had no assurance of any further jobs. And there is no reason for them to have expected any greater job protection because GM elected to establish an additional dealer, even at the same location. However, the GM employees, through their Unions, did negotiate protection for such eventuality by the contractual provisions for the income security plan, allowing cash payments on termination, and a pension plan, allowing monthly payments even on early retirement.

Moreover, the Unions were free to negotiate with GM a commitment that it would not sell or dispose of the business or that it would not do so unless the purchaser agreed to hire all of GM's employees and/or to accept the union contract. Many union contracts contain such provisions. Actually GM and the Unions did negotiate one time concerning making their contracts binding on a purchaser, but they agreed that the contract would not contain any such obligation [Jt. App. 315-316, 941-942, 948, 957, 1018; G.C. Exh. 6-J]. In the negotiations between GM and the Unions beginning in January 1965 concerning GM's discontinuance of its retail stores, the Unions did not seek to induce GM to make any purchaser agree that it would hire the GM employees [Jt. App. 973, 997-998, 1005-1006, 1124]. In any event to the extent that the Unions have been successful in negotiating protective clauses in their contract, the same are enforceable under Section 301 against GM and/or against a true successor.

Further, the interests of the GM employees are additionally protected by Section 8(a)(3) of the N.L.R.A. [29 U.S.C.A. §158(a)(3)] which precludes any employer, including a purchaser from or a successor to GM, from refusing to hire any of them because of their union connections or sympathies, if any.

This leads us to a consideration of the case of *K. B. & J. Young's Super Markets, Inc. v. NLRB*, 377 F. 2d

463 (9th Cir. 1967) *cert. den.* 389 U.S. 841 (1967), cited by the Unions (p. 43). It is clearly not applicable. The purchaser there induced the seller of a chain of meat markets to discharge its employees so that the purchaser could evade and escape its obligations as a successor to recognize the union as bargaining agent and to avoid the applicability of an existing union contract to the acquired markets. The complaint alleged and the Board found that the purchaser thereby had violated Section 8(a)(3) of the Act. Thus, the Court, at 465, distinguished its *Stepp's* decision (pages 39-40, *supra*) on the ground that in this case, "petitioner [Young's] caused the mass discharge of unit personnel for anti-union reasons." So, Young's was ordered to employ the discriminatees. Further, in view of the Section 8(a)(3) violation the Board concluded that it would order Young's to bargain with the union even if Young's were not a successor. (157 NLRB 271, 272 n. 3 (1966)).

The facts in the instant case are entirely different. The Unions' original unfair labor practice charges did include a claim of a violation of Section 8(a)(3) in the failure of Ehlers to hire all the GM employees [Jt. App. 328, 335-336]. But the Regional Director, after investigation, found no merit in this charge, so that the amended charges of November 17, 1965 [Jt. App. 329-330, 337-338] upon which the General Counsel's complaint of the same date was based, did not contain any such allegations [Jt. App. 340].

Further, GM discharged its employees without Ehlers making any request, or even a suggestion, that it do so [Jt. App. 143, 145, 153, 156, 161, 168, 431, 992, 995]. Moreover, contrary to the statement of the Unions (p. 24), Ehlers had good reason for not hiring "virtually all" of GM's shop employees. While we have not concerned ourselves with the accuracy of the Unions' statement (p. 45) relative to the hiring by Thomas, the as-

section of the Unions, without any citation to the record, that, "The testimony of Ehlers in this regard was similar" is simply untrue (see Union's Brief, p. 18).⁴

The facts are that during his daily observations at Wilshire in the two weeks prior to June 1st, Lou Ehlers heard numerous complaints from GM customers, service advisors, and salesmen concerning the poor GM repair service [Jt. App. 503, 508, 511-513]. As an independent dealer Ehlers would have to rely on good service for repeat business and sale of new cars, thus he would have to have superior service work [Jt. App. 173], just as he had had at his Wisconsin Buick dealership [Jt. App. 173-174, 1116]. He, therefore, decided not to hire the GM Wilshire shop work force intact [Jt. App. 170]. Since Lou Ehlers was not competent to judge their qualifications [Jt. App. 171], he had to rely upon the recommendations of the GM Wilshire shop service manager and a foreman [Jt. App. 194-195]. They, each acting independently, recommended to Ehlers the hiring of the same 11 GM employees as meeting Ehlers' requirements for versatility, experience, and workmanship [Jt. App. 175, 413-414, 479-481, 806] and all these 11 were so hired [Jt. App. 407]. Thus, the Board and the State court both properly found [Jt. App. 58-59, 125] that Ehlers selected its employees solely on the basis of skill and ability [Jt. App. 125].

The above are the undisputed facts which the Unions' argument entirely ignores. The Unions' contention is based upon the assumption, contrary to the facts, that their Section 8(a)(3) charges had merit. Thus, they

⁴With reference to the footnote at page 18, the Unions fail to mention that the testimony was that all of the mechanics employed by Ehlers in June had also received training at GM school [Jt. App. 408, 409], and that Graham was not limited by Ehlers as to the number of GM shop employees he could recommend to Ehlers for hiring [Jt. App. 408].

argue (p. 46) that an employer cannot bottom a good faith doubt upon a loss of majority resulting from activity of the employer, but fail to explain that in the cases cited the claimed loss of majority resulted from the prior refusals to bargain and other unfair labor practices by the anti-union employers.

Section 8(a)(3) of the Act is a complete answer to any claim that a purchaser has, or should have, a duty to hire the seller's employees. That Section was designed to prohibit an employer (including a purchaser or successor) from refusing to hire any individual (including terminated employees of a seller) for discriminatory reasons, and the Board has been aggressive, as in the *Young* case, in enforcing such provision. *Piasecki Aircraft Corp.*, 123 NLRB 348 (1959) *enf'd* 280 F. 2d 575 (3rd Cir. 1960) *cert. den.* 364 U.S. 933 (1961); *T.I.L. Sportswear Corp.*, 131 NLRB 176 (1961) *enf'd* 302 F. 2d 186 (D.C. Cir. 1962).

Any argument that a purchaser should be obligated to hire the seller's employees is actually a claim that the N.L.R.A. should be amended. Since prior to the Wagner Act, under the original N.L.R.A., and as amended by the Taft-Hartley Act, the right of a purchaser of a business to select its own work force has been recognized. This has been true in hundreds of NLRB and court cases. So, in *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 45 (1937), the Court observed, "The Act does not interfere with the normal exercise of the right of the employer to select its employees or to discharge them", except, of course, by a violation of Section 8(a)(3) or, more recently, as limited by Title VII of the Civil Rights Act [42 U.S.C.A. § 2000e-2].

On the other hand, it could be a violation of Section 8(a)(3) for a purchaser to hire exclusively the employees of the seller. Thus, in *NLRB v. Tennesco*

Corp., 339 F. 2d 396, 398 (6th Cir. 1964), with reference to an accusation that the purchaser had failed to hire a number of the employees of the seller, the court commented:

"... Was Tennsco obligated to hire only union members? It hired fourteen union members. Was it obligated to complete its roster with union members? This was a new corporation. It had as yet no contract with a union. Would not a compulsory all-union hiring have been an illegal closed shop?"

There is no basis, then, for any claim that the Act requires a purchaser to hire the seller's employees. The following observation in *Textile Workers Union of America v. Darlington Mfg. Co.*, 380 U.S. 263, 270 (1965) is equally applicable here:

"... A proposition that a single businessman cannot choose to go out of business [or a purchaser cannot hire its own work force] if he wants to would represent such a startling innovation that it should not be entertained without the clearest manifestation of legislative intent or unequivocal judicial precedent so construing the Labor Relations Act."

And so the Unions' contention that Ehlers was obligated to hire GM's employees is absolutely without merit.

The need for the Unions to reach for alleged authority in support of its untenable propositions is illustrated by the decision finally cited (page 46) [*Zdanok v. Glidden Co.*, 288 F. 2d 99 (2nd Cir. 1962) *aff'd on limited issue*, 370 U.S. 530 (1962)], which had no materiality to the Unions' arguments and has been overruled. *Local 1251, Int'l Union, UAW v. Robertshaw Controls Co.*, 68 LRRM 2671 (2nd Cir. 1968) (not yet officially reported)!

VI

There Is No Basis for Failure to Affirm the Board's Decision.

A Board determination is binding on a Court of Appeals unless the same is arbitrary or capricious. *Rutter-Rex Mfg. Co. v. NLRB*, 68 LRRM 2916 (5th Cir. 1968) (not yet officially reported). The latest word of the Supreme Court relative to the duty of a Court of Appeals in reviewing a Board decision confirms this. *NLRB v. United Insurance Co. of America*, 390 U.S. 254 (1968). This Court has fully recognized its limited powers of review of a Board determination. Just recently the Court denied a petition to review a Board order involving a successorship determination with the conclusion, "With such considerations in the balance, the Board's resolution is far from irrational." *International Chemical Workers Union v. NLRB*, 395 F. 2d 639, 641 n. 1 (D.C. Cir. 1968).

The Unions argue (p. 4), however, relying on the *Universal Camera* doctrine, that the Trial Examiner's Decision was entitled to great weight. But under that decision, any significance of a trial examiner's decision is based upon his "determination of the credibility of witnesses as shown by their demeanor or conduct at the hearing." *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 495, 496 (1951). Thus, where, as here, there are no questions of credibility involved, there is no basis for giving any weight to a trial examiner's decision. *NLRB v. Camco, Inc.*, 340 F. 2d 803, 808-809 (5th Cir. 1965); *NLRB v. Pyne Molding Corp.*, 226 F. 2d 818, 819 (2nd Cir. 1955); *Falcon Plastics-Div. of D-B Laboratories, Inc. v. NLRB*, 397 F. 2d 965 (9th Cir. 1968); *Advertising Specialty Nat'l Ass'n v. FTC*, 238 F. 2d 108, 113 n. 2 (5th Cir. 1956).

But even if we assumed, for purposes of argument, that some weight could otherwise be given to the Trial

Examiner's Decision under the *Universal Camera* principle, under the circumstances in this case it is not entitled to any consideration whatsoever. This is so because the Trial Examiner so distorted the evidence and facts and ignored the controlling law and decisions as to make his Decision valueless. We would prefer to dissect his Decision sentence by sentence to conclusively demonstrate this, but the limitations on the length of this brief preclude our doing so.

CONCLUSION.

Aside from the numerous Board decisions supporting Ehlers' position that it was not a successor to GM, there are cases from five different circuits requiring an affirmance, and there are no contrary decisions. Finally, the California State court decision in favor of Ehlers and against the Unions requires a finding Ehlers was not a successor to GM, and, consequently, had no duty to bargain with the Unions.

We have seldom encountered a case where the established principles and precedents are so overwhelming and conclusive in support of an administrative decision. The petition for review herein must be denied.

Dated: November 1, 1968.

Respectfully submitted,

RICHARD W. LUND,

JOSEPH A. WHELOCK,

*Attorneys for Intervenor
Lou Ehlers Cadillac.*

